

MINUTES OF MEETING
WEST COUNTY BOARD OF ZONING ADJUSTMENTS
JUNE 25, 2008
APPROVED JULY 23, 2008

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; Jewell Spalding; Vice Chair, Frank Peixoto; Members, Dawn Clark-Montenegro, Kathy Gil and Ineda Adesanya.

MEMBERS EXCUSED: None.

OTHERS PRESENT: Rodrigo Orduna, Senior Planner; Andrea Weddle, County Counsel; Yvonne Bea Grundy, Recording Secretary.

There were approximately 10 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 special 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. **ANIL SINGH, CONDITIONAL USE PERMIT, C-8737** – Application to allow the expansion of an auto repair facility in the CN District (Commercial Neighborhood) District. Applicant requests an existing two car canopy and a 40 foot container unit be allowed to remain on the subject property, the subject parcel contains approximately 0.24 acres and is located at 19592 Center Street, east side, corner of Edwards Lane and Center Street, unincorporated, Castro Valley area of Alameda County, designated Assessor's Parcel Number: 084C-1062-024-00. (Continued from May 28, 2008; to be continued to July 9, 2008). **Staff Planner: Jeff Bonekemper.**
2. **RUSSELL ZEN, VARIANCE, V-12095** – Application to allow: 1) a six foot, eight inch fence where six feet is the maximum height allowed; and 2) Recreational Vehicle parking in the side yard, located at 2954 Hidden Lane, north side approximately 150 feet west of Hansen Road, unincorporated Fairview area of Alameda County, Assessor's Parcel Number: 426-0030-058-00. (To be continued to July 9, 2008). **Staff Planner: Shahreen Basunia.**
3. **DHARAM SALWAN, VARIANCE, V-12098** - Application to allow expansion of a non-conforming parcel (reduced parking & excess building height) with the addition of one dwelling unit, in an R-S-D-20 (Suburban Residence, 2,000 square foot, Minimum Building Site Area per Dwelling Unit) District, located at 15814

Marcella Street, unincorporated Ashland area of Alameda County, designated Assessor's Parcel Number: 080-0045-004-15. (To be continued to July 9, 2008). **Staff Planner: Shahreen Basunia.**

Staff announced that the Applicant requested a continuance to the July 23, 2008 Meeting.

Member Gil motioned to adopt the Consent Calendar with the following modification. Variance, V-12098 will be continued to July 23, 2008. Vice Chair Peixoto seconded the motion and accepted the modification. Motion carried 4/0. Member Adesanya had not yet arrived. Therefore she did not participate in the vote.

REGULAR CALENDAR

1. **BAY GOSPEL HALLS, CONDITIONAL USE PERMIT, C-8738** - Application to allow continued operation of a church in an R-1-CSU-RV (Single Family Residence, Conditional Secondary Unit, Recreational Vehicle Parking) District, located at 4035 Seven Hills Road, south side, approximately 180 feet east of Parsons Avenue, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 084D-1342-004-03. **Staff Planner: Christine Greene.**

Staff informed the Board that the item had been reviewed at the Castro Valley Municipal Advisory Meeting on June 23, 2008. The CVMAC needed clarification regarding some of the functions of the church. The CVMAC asked for an indefinite continuance to obtain sufficient information upon which to make a determination. The Vice Chair said he was concerned with the temporary structure at the site currently being used for meetings. Alameda County has been relaxed with "temporary uses". The Vice Chair did not want a "temporary use" to continue on for an unlimited time. That prospect was not acceptable. The Chair asked Counsel if an open continuance date was permissible for the BZA Calendar. Counsel said a Hearing date should be assigned. The recommended date of September 24, 2008 contained in the staff report can be assigned. If the application is not ready for consideration at the set date, a further continuance can be considered at that time. Public testimony was opened. There were no requests to speak. Public testimony was closed.

Member Clark motioned to continue Conditional Use Permit, C-8738 to the September 24, 2008 Hearing. The Vice Chair seconded the motion. Motion carried 4/0. Member Adesanya had not yet arrived. Therefore she did not participate in the vote.

2. **XUAN DINH, CONDITIONAL USE PERMIT, C-8740** - Application to allow continued operation of an automotive repair facility in a C-1 (Retail Business) District, located at 957 West A Street, north side, approximately 108 feet, west of Hesperian Boulevard, unincorporated Cherryland area of Alameda County, designated Assessor's Parcel Number: 432-0020-026-02. **Staff Planner: Richard Tarbell.**

Staff reviewed a permit history of the application. A CUP was approved in 1976 for an auto repair facility with a variance granted to allow a free standing, and roof sign. Subsequent variances for the site were approved in 1978, 1981 and 1993 to allow a muffler shop. Outdoor work was permitted. As of 2003 all work has been conducted indoors. When C-8209 was granted in 2003 work was limited to oil changes, brakes and tune ups, with the condition that work be conducted on the interior of the shop. The current permit will continue to allow the same type of work, to be conducted on the interior of the

building. The San Lorenzo Village Homes Association had no comments in response to the referral. The Alameda County Building Department requires the Applicant to continue compliance with the Clean Water Division. If any changes are made to the interior or exterior of the building, a building permit is required. Alameda County Fire had no comment. There may be a potential conflict regarding access to the site, which is gained via a right turn lane from West A Street. However Alameda County Traffic Division said given the tabulation history of accidents at the intersection. They had no concerns regarding traffic circulation. Planning staff recommended approval of the application with the adoption of Tentative Findings. The use will be compatible with existing uses in the surrounding area. One condition to note is the requirement that the Applicant not resist annexation into the City of Hayward, given the close proximity of the location to city limits. The Chair asked if the non-conforming use was related to the exterior service area. Staff said the significance of the "A" Designation requires auto work functions take place indoors. When the Applicant abandoned the exterior use in 2003, that component of the use ended. Public testimony was opened.

The Property Owner, Mr. Son Le was present representing the Applicant, Xuan Dinh . Mr. Le asked the Board to grant the permit for a 10 year period, as opposed to 5 years. There have been no violations on the property. Board questions for Mr. Le were as follows:

- Has Mr. Le, and the Applicant read the staff report
- Would Mr. Le agree to a Condition requiring the property be kept graffiti free

Mr. Le confirmed he had read the staff report and reviewed it with the Applicant. They were in agreement with the Conditions of Approval. Mr. Le also agreed to keep the property graffiti free. Public testimony was closed.

Further Board questions for staff were as follows:

- Is the application within an area, eminent of annexation by the City of Hayward
- Was the application referred to the City of Hayward

Staff said the only pockets of land to be annexed by the City of Hayward are in locations that are completely surrounded by City property. Beyond those areas there have been no discussions to expand annexation. The application under consideration is not within one of those areas. Information regarding the application was submitted verbally with planning staff at the City of Hayward. However no written referral was submitted. The City of Hayward has not responded to the verbal request for comments. The Vice Chair said he had conducted a field trip to the site. He noted the building did not blend well with the surrounding area. The Vice Chair was not in favor of a 10 year permit. If a 10 year permit was to be granted, the site should be re-zoned to blend in with surrounding, new buildings. The Chair said the City of Hayward may also want to offer comments in regard to a landscaping plan. This would help to incorporate the visual theme of the surrounding area. Member Clark also recommended the County Redevelopment Agency offer feedback to comments received by the City of Hayward. The Vice Chair also asked Counsel if Condition #4 was appropriate. Taking away the Applicant's rights regarding annexation may not be appropriate. Counsel said the Board could remove the Condition if they felt uncomfortable. The Chair shared the observation. The word "resist" may be overbroad. Staff said it would take approximately 3 to 4 weeks to respond, and incorporate referral comments.

The Vice Chair motioned to continue Conditional Use Permit, C-8740 to July 23, 2008. Member Gil seconded the motion. Motion carried 4/0. Member Adesanya had not yet arrived. Therefore she did not participate in the vote.

3. **MIKE GUTIERRES, VARIANCE, V-12111** - Application to allow a 2 - story accessory building with a height of 31 feet and 4 inches where 1 – story with a height of 15 feet and zero inches is the maximum permitted, in an R-1-L-B-E (Single Family Residence, Limited Agricultural, 5 Acre, Minimum Building Site Area) District, located at 3914 Picea Court, northwest side at the terminus west of Oakes Drive, unincorporated Fairview area of Alameda County, designated Assessor’s Parcel Number: 425-0500-001-00. **Staff Planner: Andy Young.**

Staff gave a description of the area and a history of the application. The project is subject to the Fairview Specific Plan, and the Zoning Ordinance. In 2007 a Planned Development District application was submitted. The request was for a secondary unit on the lower level. The application was withdrawn based on objections raised by Environmental Health. The current application is for an accessory structure on the lower level. The current height variance is for 31 feet, 4 inches. The proposal will increase the height to twice the 15 feet allowed per the Zoning Ordinance. The area is characterized by some rural and semi rural uses. Lot sizes are large and small ranging from 3 to 5 acres. Development has spread since the 1950’s to the present day. The project is not exempt from CEQA if approved. However the staff recommendation was denial. Based on CEQA Guidelines, Section: 15061, b(4) if the project is rejected or disapproved. The project can be exempted from CEQA Requirements. If the BZA was inclined to approve the project, staff would request a continuance to conduct further study of possible environmental impact. Staff believed an Initial Study would be required based upon proposed building construction in an area of greater than 20% slope. Twenty percent is the cut off for an exemption when there is no change to the land use or density. Anticipated impacts to the neighborhood may be traffic due to the increased number of cars, and limited access. Hydrology and geology on the property may also be factor. The Chair asked the difference between projects in the Madison Area Specific Plan which were exempt from CEQA for areas of 30% slope. The Vice Chair added that past projects within the Madison Plan had come before the Board for variance requests to build within 30% slope areas, which is not allowed in the Madison Plan. Staff said they believe the projects within the Madison Plan used an overall study of the entire area on which to base the 30% slope threshold, as opposed to one specific site. Counsel stated that she was not working with the County at that time. Research can be conducted regarding past projects within the Madison Plan Area. The Chair asked staff to pursue the research, as there was substantial documentation regarding CEQA exemptions. The Chair continued and said she was not completely comfortable with a CEQA exemption at this juncture. Member Gil agreed that Members would need more time to study the volume of materials distributed by the Applicant at the meeting. Staff clarified that some of the materials were already contained in the Board packet. Public testimony was opened.

Ms. Collette Meunier, a Consultant Planner was present representing the Applicant. Ms. Meunier has been in private practice for a period of 3 years. She has spent 28 years working exclusively for public agencies. She held such posts as Current Planning for Marin County, and as the Building and Planning Director for the City of Alameda. She was also Community Development Director for the City of Bencia. During her tenure she has worked on many variance applications. Variances are difficult due to the findings that must be reached. This case has some difficulties. However she believed the findings could be made. Therefore the application should be granted. The variance request is only for height, not for number of stories. Because of the slope the Zoning Ordinance has a provision that allows two stories. The project would comply with the Zoning Ordinance regarding setbacks and coverage. The height compensates for the existing slope of 70% slope. The Applicant would like an enclosed garage to store, and make repairs to his antique car collection. He never intended to construct a second unit. Often there is confusion between the terms secondary and accessory unit. They are terms of art. Mr. Gutierres put forth the earlier application per staff’s direction. He got the idea for a recreational area from other plans that he had seen. Since it was never his intention to construct a second unit, Mr. Gutierres has revised the design. The lower level has been reduced, and all plumbing has been removed. Mr. Gutierres would like

to have a slop sink in the garage, due to the nature of the activity. Ms. Meunier then responded to comments regarding the septic system. A summary of the December meeting with Alameda County Environmental Health was provided. The review found that a different septic design would be appropriate since the project square footage had been reduced. The project would be considered a Class #3 Septic System. Setbacks would change given it is no longer considered a dwelling unit. An engineer from Quest Engineering is present to answer further questions. Mr. Gutierrez is happy to comply with County septic codes. This may include pursuit of an appeal to the determination of the December Hearing regarding septic, or a variance to comply with outstanding requirements. In regard to the use, the "use" will be accessory. Staff has provided no information other than the proposed size of the structure. That the use will not, be accessory in nature. Ms. Meunier then distributed photographs of properties in the surrounding area that have large and/or multiple structures that are accessory uses to the property. She believed the photographs supported her contention these structures support the lifestyle of residents, that may not fit a more densely populated area. The Applicant is open to a Condition that would require a deed restriction and proof of recordation that only one dwelling unit is allowed on the property, unless Zoning were changed for the area or site per the County. The staff report states the project cannot meet the required finding of special circumstance, regarding height. However under Tentative Finding #1 staff did find that special circumstances apply. Ms. Meunier believed that due to the extremely limited frontage, and the location at the end of a sub-ridge. The property is the steepest in the vicinity. Due to the location of easements, zoning and setbacks for the area, this results in the structure being placed on a slope. Based on facts provided by staff, special circumstances did apply. If Mr. Guterres was not granted a variance, he would be denied the privilege enjoyed by others. Letters of support have been submitted by his neighbors. The orientation has determined to prevent view blockage. No neighboring views will be blocked. The present dwelling is not for multiple families just the Applicant and his wife live in the home. The vehicles will not leave the garage often, only for Classic Car Shows. The structure will be closed, and sheltered from noise. Ms. Meunier was not in agreement with the staff interpretation that the project is within CEQA Class #5. Class #5 relates to alterations and land use limitations. CEQA Class #3 is more appropriate for this use. Class #3 relates to new construction and conversion of small structures. Ms. Ms. Meunier provided the CEQA language for both Classes. Specifically Section (e).

Board questions were as follows:

- Does the increased height compensate for the property slope
- How was the height of the building determined
- Was the height averaged
- Is the design more feasible on an area of stable ground
- Can the proposal be achieved by adding fill to the site
- Do the existing leech fields dictate structure design
- How many leech fields are present at the site
- Does vehicular traffic on the existing roadway affect existing leech fields
- When did staff obtain a copy of the materials submitted at the meeting
- What are the addresses of the photographed sited, submitted at the hearing
- Has Ms. Meunier been to the site

Ms. Meunier said the height for the project was calculated by taking the lowest point around the perimeter of the foundation, and the highest point. That figure is added together, then divided. An imaginary line is created and measured to the highest point of the proposed structure. This is how the project height of 31 feet, 4 inches was determined. Ms. Meunier confirmed she had visited the site. The area could be completely filled in, to create a flat surface. However this would eliminate any storage area on the lower lever, and require a retaining wall. Creating a flat surface would require considerable geological research to determine how the design would be achieved. Ms. Meunier said ultimately all concepts could be

achieved given unlimited time and money. However desired use and costs are considerations that must be weighed. Although the retaining wall design would not require a variance. The proposed inset design would preserve the hillside geological stability, and blend with the area. A flat surface in the rear would not be consistent with surrounding homes. The roof slope adds some architectural interest. The height at the front will be 19 feet, 11 inches. At the 70% slope area the height is necessary to under pin the structure to the downhill slope. The proposed structure would be adjacent to the leech fields. Cars can safely drive over the top of the fields without detrimental compaction. This was the determination of the experts at the December Environmental Health Hearing. The Engineer with Quest can further parse details regarding leech fields, and lines. Ms. Meunier reasserted that she did not believe a CEQA study was necessary. The CEQA, Guideline for Class #3 (e) does not have a slope limitation or require a variance.

Staff offered a point of clarification. The materials submitted by the Applicant in March were included in the staff report. Apparently the last page of the letter from the Applicant's neighbor was mistakenly omitted. The Chair and Vice Chair pointed out that the photographs submitted today had different addresses than the photos in the staff report. Ms. Meunier acknowledged that she did submit a response document at the hearing. She was contacted by Mr. Gutierrez on Monday, to evaluate the staff report.

The Chair thought it would be appropriate to take a short break, to review newly submitted materials. In her estimation there could be a dispute about CEQA since the Board had granted variances to properties with slopes greater than 20%. A determination regarding exemption must be reached. The Vice Chair thought it would be more efficient to accept public testimony, and continue the application for 2 to 3 weeks. This would give the Board an opportunity to absorb the information.

Mr. Norm Hantzsche a Civil, and Environmental Engineer from Questa Engineering was present. He had worked creating engineering specifications for many years. He hoped to clear up some of the confusion regarding the application. The septic system is an issue separate from the variance request. The septic system supports a 4 bedroom house that was built in the 1950's. The septic system is located downhill from the dwelling. Mr. Gutierrez purchased the home in the 1980's. He has made repairs to the original system, with benefit of County permits. The solution was to place a new leech field, which includes several leech lines. These contain 2 full fields. One field is in operation while the other field is at rest. The leech fields were placed in 1991 within the bench area, under the roadway. This system has been in use until the present time. The system has been used by the Applicant and his family. Proving it can withstand the capacity. When the Applicant considered a game room in the accessory structure he was asked to provide information to Environmental Health, to determine requirements. The County evaluated that a Class 1 or Class 2 septic system would be required, based on the amount of living space. Although the proposed space was to be a game room, the proposal included plumbing facilities. The accessory structure was calculated to exceed more than 30% of the living space, of the home. This triggers a Class #2 septic system, and all setback requirements. In 1991 when the repairs were conducted the same setbacks were in effect. However now the leech fields are located under the dirt roadway, therefore the setbacks to a structure or roadway could not be met. The Health Department denied the original proposal. Mr. Gutierrez was not working with Quest but another septic contractor. The decision was appealed. However the denial was upheld by the Director of Environmental Health. It was suggested the only other option was to submit a variance application, and go to a hearing. It was at the variance hearing Questa Engineering became involved. He prepared a summary of the hearing for planning staff. Mr. Hantzsche recommended a size reduction of the downstairs habitable space area from 950 feet to 900 square feet, with the elimination of added plumbing. The reduced size would not trigger the setback requirements. The septic system would still have to comply with County Ordinances and permit requirements. However set back requirements would not be triggered. The variance request may be eliminated altogether regarding septic, if the project could be reduced to a Class #3 septic system. An extensive discussion occurred at the hearing conducted by Environmental Health regarding compaction. At the conclusion of

the hearing there was no final determination regarding the septic system, because the application was to allow a 950 square foot addition, and still could be found to be secondary unit thereby triggering Class #1 requirements. No decision could be made without the size being reduced and a determination made about it not being a secondary unit. Septic options can be discussed further once a determination is made as to how the proposal will be classified. Mr. Hantzsche believed based on the language contained in the County Code, the project did qualify as a Class #3 septic system requirements. The concern raised in the staff report about vehicles driving over the roadway is addressed by Kurt Jensen in the geotechnical report. It is clear that there has been use of the roadway, but Environmental Health remains concerned with the compaction of the leach field, but the record shows that the system is so deep and that compaction would not damage the pipes. The leech field system was dug up to see its condition. No affects have occurred as a result of surface compaction. The top of the leech fields start at 7 feet below ground. Geotechnical tests show the fields have been effective. Drainage rock was clean, and showed no saturation. There has been no compaction past the 8 to 12 inches allowed. The system has been active, which supports the fact that the fields are viable. They have served the property until the present with no problems. Photographs were submitted for the record. The Environmental Health Agency will make the determination regarding the septic system. However Mr. Hantzsche wanted to present all materials to the BZA as well. The Chair asked Mr. Hantzsche if the proposal had been for 900 square feet if any of the Environmental Health review would have been triggered; Mr. Hantzche replied that it just would not have triggered the requirement that all setbacks requirements be met, or the need for the variance.

Staff clarified that the proposal is to reduce the lower portion of the project to 900 square feet. The total footprint of the home is 2,000 square feet. The existing upstairs garage is 50 feet by 40 feet. The Chair commented there are many split level structures in the surrounding area. Additional Board questions were as follows:

- Will the revised project still include a bathroom
- Has the Applicant submitted a full set of plans
- Is Board consideration limited to a variance solely for height

Staff pointed out the plans submitted did not indicate a bathroom. However the Board could allow the Applicant to install a bathroom if they chose to do so. Mr. Guiterres told the Board he had submitted a full set of plans to staff. A set was then circulated at the meeting.

The Applicant Mike Gutierres said he was surprised staff had not given more information to the Board. He submitted the material on March 18, 2008. The floor plan does not include a half bathroom because the plans have been modified. Originally he wanted a game room along with a half bath room on the lower level. Per staff's recommendation the bathroom square footage was reduced to 20 square feet. This was to ensure that the downstairs area would not be used as an apartment unit. He was also told if the project were reduced to 400 square feet. The bathroom could remain. Mr. Gutierres then proposed a 1/2 bathroom upstairs. This would prevent the perception that the space would become an apartment. With respect to traffic, there will be no impact. Only 1 car will be driven at a time. When a car is taken out it will traverse his own roadway. All vehicles not being used will be parked inside of a garage. The setback from the leech field will be set back 10 feet from the garage. Mr. Gutierres conceded that he is not an expert regarding secondary units, and accessory buildings. When he went to the Planning Department he wanted to build a garage. Staff told him to apply for a secondary unit. He had no idea the process to build a garage was going to become so expensive, and complicated. At this point it has gotten out of hand. The garage would be 19 feet, 11 inches above the ground. This exceeds the Ordinance by 5 feet. It might be easier to build on a flat surface. However the property is on a cul-de-sac, and the land is sloped. He showed photographs of homes across the canyon on Arbutus Court with structures on slopes. The Chair pointed out that the homes on Arbutus Court have a sewer line. Mr. Gutierres acknowledged

that sewer lines have recently been installed. Prior to that, the area used septic as well. Slope has never been an issue. He is a plumber by trade, and familiar with septic issues. His property is well maintained. He wants to keep his property, and the surrounding area nice. There are trees at the base of the property which screen the lot. He moved to the area because it offered large open lots with the possibility of expansion. One of his neighbors owns 6 horses, and has a barn. He thinks it is also appropriate for him to have 6 cars. The garage will be for 5 cars, and include a work area. The size of the overall building is 2,000 square feet. The building needs to be of a certain size to work on cars, hold machinery and store equipment. To pay for car restoration is expensive. By doing the work himself he can save money. The lower level room was intended for memorabilia, pool table and game room. He and his wife are the only two that live in the home. There is no intention of turning the space into a habitable area.

Board Members asked staff if the property were not on a slope what would be the impact if a retaining wall were installed. Staff said the project would go out 5 feet beyond the current perimeter of the building. This would in turn create grading issues. The building is located next to the outer perimeter of oak trees. Based on the contour lines there may also be issues with the Riparian Habitat. Further analysis would be necessary to determine possible impacts. The Chair confirmed the area contained Riparian Habitat. Mr. Gutierrez said a retaining wall would be at an approximate height of 30 feet to retain the dirt. The revised proposal would bring beauty to the area.

Board questions for the Applicant were as follows:

- Will there be any fluid discharge as a result of the work
- What type of equipment will be used on site
- Are the neighbors aware that vehicle work will be conducted on-site
- During what hours will work be conducted
- How many vehicles are currently on the property
- Is there an alternate location or configuration for the garage

Mr. Gutierrez said his work with cars is a hobby, not a business. He plans to retire in a year and keep the Hours of 8 a.m. to 5 p.m. Mostly he will remove fenders and be working with individual parts. Once the parts are removed they may be taken to a friend's shop for chrome plating etc. Most of the tools will be manually operated. He presently works on cars, only his hours will change. Currently there are 6 vehicles on the property. One vehicle will be restored at a time. Only 1 vehicle will be taken to car shows at a time. His wife will not even drive a second vehicle to shows. He needs the additional room for storage. He is willing to leave the room in an unimproved state. The neighbors are aware of the activity. The only neighbors that may be affected by the project live to the northeast side of his property. They have submitted a letter of approval. All of the surrounding neighbors are happy their view will not be affected. Planning staff initially advised him to build an accessory structure. However when they visited the property they were overwhelmed. In response they never told him to reduce the size of the proposal. Ms. Meunier has provided the solutions posed thus far. She also had to provide staff with options as they did not pose any alternatives. Due to the delays and the cost he would like to move forward with his project. The Chair apologized. County staffing had been limited during the past year. Now that application information has been explained and discussion has resulted. A thorough review can take place. Mr. Gutierrez told the Board that the project architect did consider the entire lot. The only flat ground is located at the bottom of the site. The slope is unbearable. It would be difficult to get vehicles and equipment to that part of the site. Member Adesanya said the slope of the site may be considered a special circumstance. Given that feature, Mr. Gutierrez should present the architect's notes and any further information regarding topography etc. This may assist the Board in making findings. The Chair pointed out that Ward Creek is located behind the property. This may also be considered a special circumstance as the creek is a designated, Riparian Area.

Ms. Melba Bertush who lives at 3989 Picea has been Mr. Gutierrez's neighbor for many years. Mr. Gutierrez is an exceptional neighbor. The height of the proposed structure is not a factor. It will not be an issue due to configuration, and location at the end of the cul-de-sac. A structure of 50 feet in height would not be visible. The Gutierrez home is lovely, and maintained in a meticulous fashion inside and out. Mr. Gutierrez has done his homework regarding the project. Although he may have been misled. He has been an outstanding citizen.

Another neighbor, Mr. James Jardine said he owns the property at 4033 Picea Court. He also collects cars. He owns 17 vehicles and understands car collecting. The trees that surround the Gutierrez property are a buffer. For example on his site, he planted trees as a buffer in response to a neighbor. Who he feels grossly violated a variance that had been granted. The neighbor overbuilt onto his property. In addition the neighbor's septic system failed. They extended leech fields onto Mr. Jardine's property, and the County will not make the neighbor remove them. In contrast Mr. Gutierrez has installed his leech fields in the correct manner. Mr. Gutierrez has benefited the neighborhood. Whereas others in the neighborhood have been allowed to violate Zoning, and the County will not make them comply. Mr. Jardine did not believe the BZA should hold Mr. Gutierrez to the fire. Such an action would be disingenuous. Mr. Jardine pointed out that his neighbor built a 4 story apartment complex that is being used as a boarding house. The structure was built on a ridge which is contrary to the Fairview Plan. The Chair asked Mr. Jardine to stick to testimony related to the Gutierrez application. Any testimony not related to the case must be presented during Open Forum. Mr. Jardine said he would like to continue, with his testimony. The Applicant is a plumber by trade and has knowledge of septic lines. Many accessory structures exist in the area that exceed the 15 foot Ordinance height limit. Mr. Jardine believed the application should be approved. He added that the Chair Person of the BZA lives in the same neighborhood. She has a barn that is in excess of 30 feet, in height. On Oakes Drive there is another structure being proposed that is much higher. All things considered the application should be approved. The proposed location is behind the existing home. The design is on a slope and consideration has been taken of the surrounding impact to neighboring property views. The Board should consider the integrity of the Applicant. If he says he is not going to turn the space into a second unit. He should be taken at his word. Regarding work on cars Even if a compressor will be used. New compressor designs do not generate a lot of noise. However most work done on classic cars is done with hand tools, the neighbor's quiet time will not be affected. Mr. Jardine said the Applicant took the time to go through the permit process, where others did not. The County has not gone after violators. The BZA should grant this application. Member Clark asked Mr. Jardine if he was aware that a variance ran with the land. If the variance were granted, the use would be applicable to a new property owner. Mr. Jardine said he did give the consideration some thought. However even with reduced property values, in this day and age it is unlikely someone would spend that kind of money, and in turn abuse the property. The terrain is such that the use would be conducive to an accessory or hobby use, as opposed to a living unit. Anyone purchasing the property would probably have a similar use in mind. Member Clark said regardless of the integrity of the Applicant, the Board had to base their decision upon land use statutes. She asked Mr. Jardine if he would he still be in favor of approval, if the neighbor referred to in his letter purchased the property. Mr. Jardine said given the properties of the site he hoped the "use" would speak for itself. For example he would also like to build a barn at his site. However it is difficult with a 15 foot height restriction. A lower structure would not hold the equipment he intends to use. He would also be in a position to request a variance. Regarding Mr. Gutierrez, he has been considerate and approached the neighbors. He has also been forth right with the process. In the end, the design is conducive for a hobby shop. Not to live. The Chair noted that Mr. Jardine stated his address as 4033 Picea Court. However there is no home on the lot. Mr. Jardine clarified that he was building a home on the parcel. He grew up in the neighborhood on another property.

Member Adesanya asked the Applicant if the current garage is attached to the home. Mr. Gutierrez

confirmed the existing 3 car garage is attached to the home. Member Adesanya pointed out that the new garage was for 5 cars. There would be a total of 8 vehicle spaces on the property, if the application were granted. The Applicant acknowledged that point. Public testimony was closed.

The Vice Chair said he would need additional time to absorb the information presented, and asked for a continuance. Member Adesanya asked staff to provide more information about other accessory structures and/or secondary units in the area. Also if any of the structures are legal non-conforming. The Chair thought the issue before the Board was restricted to consideration of a height variance. Perhaps the concerns raised had been addressed by the Applicant. The Vice Chair agreed, if height was the consideration. Staff may also want to reconsider the present position for Tentative Finding # 2 and #3.

The Vice Chair motioned to continue the application to July 23, 2008. Member Clark seconded the motion. The Chair asked Board Members if they would like to discuss the application further. Member Gil said that she had read the submitted materials during the hearing. She was prepared to make a decision. Member Clark withdrew her second.

Member Gil said based on the testimony, and the material submitted. A decision would allow the Applicant to move forward, without further delay. Member Clark said she tended to agree. However she would also like review the materials further. Staff should provide additional technical information regarding leech fields. In addition staff should confirm if the BZA decision is limited solely to height. Member Adesanya preferred the application be continued. However if Board Members were considering a vote, re-crafted findings would be necessary. Public Testimony was re-opened for the purpose of speaking to the Applicant.

Ms. Meunier interjected. She recommended staff adopt the findings submitted in her report. Member Adesanya said that she was not in complete agreement with Ms. Meunier's proposed recommendations. She did not have sufficient information present. However based on what she had reviewed. Member Adesanya did believe the project could ultimately gain approval. Although not prepared to make that determination at the current juncture. The Chair asked Mr. Gutierrez what date would be acceptable to him. Mr. Gutierrez said the July 9, 2008 would be acceptable. Staff responded that would not be sufficient time to prepare, and mail reports for a July 9, 2008 Hearing. Given the 4th of July Holiday.

The Chair asked staff if it was appropriate for the Board to determine the appropriate CEQA Classification and exemption status, since the project has been reduced to 900 square feet. Staff said their position was that the proposed structure would not, be exempt from CEQA. For a structure to be exempt, it must comply with the Zoning Ordinance. In this case a variance is being requested. Therefore if the Board requests staff consider an exemption. Further study would be required to determine what, if any CEQA exemptions apply. Counsel said the first step would be to make a determination that the project is exempt from CEQA Requirements, prior to the Board making a discretionary determination as to which CEQA Class the project fits into. This is an issue that staff will revisit. In consideration, CEQA Law will be reviewed in its entirety as it relates to the project. As there are provisions that discuss zoning and environmental impact. Public testimony was closed.

The Vice Chair motioned to continue the application to July 23, 2008. Member Clark seconded the motion. Motion carried 5/0.

APPROVAL OF MINUTES: Member Clark motioned to approve the Minutes of June 11, 2008 with amendments. Member Gil seconded the motion. Motion carried 4/0. The Vice Chair abstained as he was not present at the June 11, 2008 Meeting.

ELECTION OF CHAIR AND VICE CHAIR: Frank Peixoto asked County Counsel if the Rules and Procedures for the BZA allowed the Chair and Vice Chair positions to rotate, as opposed to holding an election. Counsel said the Board of Zoning Adjustment Rules, did require election of a Chair and Vice Chair. However the Board may have an informal understanding that rotation is acceptable, if all Members agree.

Member Adesanya said she did not necessarily agree that rotation was the best approach. This observation is based on her 8 year tenure on the Castro Valley Municipal Advisory Council. An election may be more appropriate to ensure the candidate is willing to accept the position. In addition to studying the application materials, conducting bi-monthly meetings is a considerable responsibility.

Member Gil motioned to nominate Dawn Clark for the position of Chair. Member Clark said she was willing to accept the nomination. However she hesitated because she may arrive late due to the ongoing delays in the BART System.

Frank Peixoto nominated Jewell Spalding for the position of Chair.

Member Gil pointed out that in the event the Chair was late. The Vice Chair can begin the meeting. The Chair can take the gavel when they arrive. This practice has been implemented in the past when the Chair arrived late.

Jewell Spalding removed her name from consideration.

Jewell Spalding motioned to nominate Dawn Clark for the position of Chair. Member Clark accepted the nomination. Member Gil seconded the motion. The motion to install Dawn Clark as the Chair Person of the West County Board of Zoning Adjustments passed 4/0. Member Clark abstained and did not participate in the vote.

Frank Peixoto motioned to nominate Kathy Gil as Vice Chair. Member Gil accepted the nomination. Member Adesanya seconded the motion. The motion to install Kathy Gil as the Vice Chair Person of the West County Board of Zoning Adjustments passed 4/0. Member Gil abstained and did not participate in the vote.

STAFF COMMENTS & CORRESPONDENCE: Staff reminded Board Members that the August 13, 2008 Meeting has been cancelled. The next Meeting will be on August 27, 2008 at 1:30 p.m.

BOARD'S ANNOUNCEMENTS, COMMENTS AND REPORTS: Member Clark said there was a complementary article in the newspaper about the Martial Arts Studio that received permit approval last August. It is nice to see a business that has a positive effect on the community.

Member Gil reminded staff that she may not be present at the July 9, 2008 Meeting. She is returning from vacation, and may be delayed.

The Chair asked staff to investigate a parcel with "for sale signs" on Fairview Avenue. The Chair understood that the property was to be left as open space, as it is the head water for Sulpher Creek.

The Chair asked for further information regarding the CEQA as it pertained to earlier discussions. Staff may want to reconsider. There appears to be inconsistency, as CEQA Study exemptions have been allowed for applications within the Madison Avenue Specific Plan Area. County Counsel said she was not on board when past applications were considered. Staff said they would review those records and

respond to questions. The Chair said there was substantial information to review. Member Adesanya said she was not on the BZA until recently either. However based on her experience on the CVMAC and as a Planner; It is not uncommon for a project that is related to a Specific Plan. To rely upon a CEQA or EIR document conducted for the overall study area.

ADJOURNMENT: There being no further business, the hearing adjourned at 4:45 p.m.

ALBERT LOPEZ - SECRETARY
WEST COUNTY BOARD OF ZONING ADJUSTMENTS