

**MINUTES OF MEETING
WEST COUNTY BOARD OF ZONING ADJUSTMENTS
AUGUST 27, 2008
(APPROVED SEPTEMBER 10, 2008)**

The meeting was held at the hour of 1:30 p.m. in the Alameda County Building, 224 West Winton Avenue, Hayward, California.

FIELD TRIP: 11:00 a.m.

The Field Trip was cancelled. Members visited properties on an individual basis.

1. **JOSE & GUILLERMINA RAMIRO, CONDITIONAL USE PERMIT, C-8747** - Application to allow continued operation of a tavern, in an ACBD – SP – TC (Ashland and Cherryland Business District Specific Plan-Transit Corridor) District, located at 15698 East 14th Street, east side, corner north of Plaza Drive, unincorporated Ashland area of Alameda County, designated Assessor's Parcel Number: 080-0034-007-00. **Staff Planner: Richard Tarbell.**
2. **CHONG KO, VARIANCE, V-12110** - Application to allow expansion of a non-conforming use (Tavern) in an, ACBD – SP – R (Ashland and Cherryland Business District Specific Plan-Residential) District, located at 391 Lewelling Boulevard, north side corner northeast of Usher Street, unincorporated San Lorenzo area of Alameda County, designated Assessor's Parcel Number: 413-0011-030-04. **Staff Planner: Christine Greene.-**

MEMBERS PRESENT: None.

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

REGULAR MEETING: 1:30 p.m.

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

MEMBERS EXCUSED: None.

OTHERS PRESENT: Phil Sawrey-Kubicek, Senior Planner; County Counsel; Andrea Weddle; Recording Secretary, Yvonne Bea Grundy.

There were approximately 8 people in the audience.

CALL TO ORDER: The meeting was called to order by the Chair at 1:30 p.m.

ANNOUNCEMENTS BY THE CHAIR: The Chair made no special announcements.

NEIGHBORHOOD PRESERVATION AND ZONING ORDINANCE ABATEMENT HEARINGS

The Board took the following actions on the Alameda County Code Enforcement Calendar:

1. **HSBC BANK USA TR, 20226 Concord Ave., Hayward, CA 94541**

In violation of Alameda County Ordinances Section 6.65.030 A (1 & 3) and M (1), and 17.52.180, 17.52.955 & the Junk Vehicle Ordinance 6.48.

1. Debris, furniture, clothing, garbage trash
2. Inhabited trailer
3. Illegal garage conversion
4. Inoperative vehicles
5. Illegal unit

Member Spalding motioned to uphold the staff recommendation to declare the property a public nuisance to be complete within 10 days by removing the inoperative vehicles, the inhabited trailer, furniture, clothing, garbage, trash, and debris; Securing the property, including the boarding of doors and windows. Staff will return to the Board in 30 days to address any further Code Enforcement action that may be required, concerning the illegal garage conversion and the illegal unit. Member Peixoto seconded the motion. Motion carried 5/0.

2. DANIA ADEYINKA, 553 Bartlett Ave., Hayward, CA 94541

In violation of Alameda County Ordinance Section 6.65.030 A (1 & 3) and M (1) and the Junk Vehicle Ordinance 6.48.

1. Unlawful outdoor storage of furniture, appliances, junk, debris and miscellaneous items
2. Inoperative vehicles

Member Spalding motioned to uphold the staff recommendation to declare the property a public nuisance, and require the abatement to be complete within 10 days. Vice Chair Gil seconded the motion. Motion carried 5/0.

3. HEIRS OF ESTATE OF IVY MACIOLEK, 480 Medford Ave., Hayward, CA 94541

In violation of Alameda County Ordinance Section 6.650.030 A (3 & 4), D (1 & 3) and M (1).

1. Overgrown vegetation and weeds
2. Unlawful storage of dilapidated, un-mounted camper in front yard

Member Peixoto motioned to uphold the staff recommendation to declare the property a public nuisance, and require the abatement to be complete within 10 days. Member Spalding seconded the motion. Motion carried 5/0.

4. MOGEEB WEISS, 18698 Crest Ave., Castro Valley, CA 94546

In violation of Alameda County Ordinance Section 6.650.030 D (1 & 3) and M (1).

1. Dead pine trees

Vice Chair Gil motioned to uphold the staff recommendation to declare the property a public nuisance, and require the abatement to be complete within 10 days. Member Adesanya seconded the motion. Motion carried 5/0.

5. MICHAEL W & DANA A RASMUSSEN, Hannah Dr., San Lorenzo, CA 94580

In violation of Alameda County Ordinance Section 6.650.030 D (1 & 3) and M (1).

1. Overgrown vegetation & weeds

Member Spalding motioned to uphold the staff recommendation to declare the property a public nuisance, and require the abatement to be complete within 10 days. Vice Chair Gil seconded the motion. Motion carried 5/0.

6. MARK ANDRESON, 2121 Sol St., San Leandro, CA 94578

In violation of Alameda County Ordinance Section 6.650.030 A (1 & 3) and M (1).

1. Unlawful outdoor storage of automotive parts, tires, household items, boxes, wood and metal scraps, rubbish & debris in driveway and front yard

Member Spalding motioned to uphold the staff recommendation to declare the property a public nuisance, and require the abatement to be complete within 10 days. Member Peixoto seconded the motion. Motion carried 5/0.

7. LASALLE BANK NATIONAL ASSOCIATES, 16692 Liberty St., San Leandro, CA 94578

In violation of Alameda County Ordinance Section 6.650.030 D (1 & 3) and M (1).

1. Overgrown vegetation & weeds

Vice Chair Gil motioned to uphold the staff recommendation to declare the property a public nuisance, and require the abatement to be complete within 10 days. Member Spalding seconded the motion. Motion carried 5/0.

8. ANA KERRIGAN, 22199 Princeton St., Hayward, CA 94541

In violation of Alameda County Ordinance Section 6.650.030 A (1 & 3), D (1 & 3) and M (1).

1. Unlawful outdoor storage of household furniture, mattresses, automobile parts, tires, miscellaneous items, rubbish and debris.
2. Overgrown vegetation & weeds

Member Peixoto motioned to uphold the staff recommendation to declare the property a public nuisance, and require the abatement to be complete within 10 days. Vice Chair Gil seconded the motion. Motion carried 5/0.

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. **GUADALUPE LOZA/FRED FULCHER, CONDITIONAL USE PERMIT, C-8271**– Application to allow continued operation of a mobile outdoor business (Catering Truck), in a PD-ZU-1487 (Planned Development, 1487th Zoning Unit) District, located at 691 West A Street, north side, corner, northwest of Royal Avenue, unincorporated Hayward area of Alameda County, bearing Assessor's Parcel 0432-0016-035-00. (Continued from February 11, April 14, April 28, May 26, July 14, September 8, October 13, 2004, March 23, June 22, October 12, December 14, 2005, March 22, May 24, September 13 and November 15, 2006, March 28, July 11, August 8 and September 12, 2007; January 9 and April 23, 2008; to be continued to September 24, 2008). **Staff Planner: Christine Greene.**

The Chair asked if staff was still in contact with the Applicant. Staff said the Applicant has been in communication with the, assigned planner. The Applicant requested the most recent continuance because they would be on vacation.

2. **FRANCISCO PENA, CONDITIONAL USE PERMIT, C-8389** – Application

to allow the operation of a mobile outdoor business (Catering Truck) in a TC (Transit Corridor) District, located at 16211 East 14th Street, southwest side, end southwest of 162nd Avenue, unincorporated Ashland area of Alameda County, designated Assessor's Parcel Number: 080C-0479-003-00. (Continued from January 11, March 22, May 24, September 13 and November 8, 2006, February 7, April 11, July 11, August 8 and September 12, 2007; January 9 and April 23, 2008; to be continued to September 24, 2008). **Staff Planner: Christine Greene.**

The property owner notified staff that he was unaware of the application. He will consider the process, and inform planning of his decision.

3. **ROBERT NAVARRO, CONDITIONAL USE PERMIT, C-8727** – Application to allow sales and installation of car audio, stereo systems and window tinting in a P-D (Planned Development) ZU-1487 (1487th Zoning Unit) District, located at 691 West A Street, north side, corner north west of Royal Avenue, unincorporated Cherryland area of Alameda County, designated Assessor's Parcel Number: 432-0016-035-00. (To be continued to October 8, 2008). **Staff Planner: Christine Greene.**
4. **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. (Continued from June 25 and July 9, 2008). **Staff Planner: Donna Vingo. THIS APPLICATION HAS BEEN WITHDRAWN.**
5. **DHARAM SALWAN, VARIANCE, V-12098** – Application to allow expansion of a non-conforming parcel (reduced parking and excess building height) with the addition of one dwelling unit in an R-S-D-20 (Suburban Residence, 2,000 square feet Minimum Building Site Area per Dwelling Unit) District, located at 15814 Marcella Street, north side, approximately 310 feet east of Mono avenue, unincorporated San Lorenzo area of Alameda County, designated Assessor's Parcel Number: 080-0045-004-15. **Staff Planner: Donna Vingo. THIS APPLICATION HAS BEEN WITHDRAWN.**
6. **BRIAN KHO, VARIANCE, V-12112** - Application to allow construction of an attached garage creating an average height of 32 feet where 25 feet is the maximum allowed, in an R-1 (Single Family Residence) District, located at 14625 Midland Road, west side approximately, 420 feet north of Altamont Road, unincorporated Hillcrest Knolls area of Alameda County, designated Assessor's Parcel Number: 079-0004-011-02. (Continued from June 11 and July 9, 2008). **Staff Planner: Jeff Bonekemper. THIS APPLICATION HAS BEEN WITHDRAWN.**
7. **BRIAN KHO, VARIANCE, V-12113** - Application to allow construction of an attached garage creating an average height of 32 feet where 25 feet is the

The Chair asked staff if the Applicant was able to re-design the project. Staff confirmed that as a result of the revised design. A variance was no longer necessary.

maximum allowed, in an R-1 (Single Family Residence) District, located at 14641 Midland Road, west side approximately, 300 feet north of Altamont Road, unincorporated Hillcrest Knolls area of Alameda County, designated Assessor's Parcel Number: 079-0004-011-03. (Continued from June 11 and July 9 2008). **Staff Planner: Jeff Bonekemper. THIS APPLICATION HAS BEEN WITHDRAWN.**

The Chair asked staff if the Applicant was able to re-design the project. Staff confirmed that as a result of the revised design. A variance was no longer necessary.

Member Spalding motioned to accept the Consent Calendar as submitted. Member Gil seconded the motion. Motion carried 5/0.

REGULAR CALENDAR

1. **RICHARD GOLD, CONDITIONAL USE PERMIT, C-8640** – Application to allow continued operation of a “B” Type Service Station, in an ACBD – BDI (Ashland and Cherryland Business District Specific Plan- Business Industrial) District, located at 594 East Lewelling Boulevard, north side, terminus, north of Boston Road, unincorporated San Lorenzo area of Alameda County, designated Assessor's Parcel Number: 413-0027-058-02. (Continued from September 26, October 24, November 14 and December 5, 2007; January 9, February 27, April 23 and July 9, 2008). **Staff Planner: Pat Anekayuwat.**

The staff recommendation was approval. The Applicant has received clearance from Alameda County Fire. He is still working with the Building Department for a refrigerator unit permit. The application will be conditioned as such. Public testimony was opened. The Applicant, Mr. Gold was present.

Board questions for the Applicant were as follows:

- Has the Applicant read the staff report
- Is the Applicant in agreement with Conditions #14 & #16 regarding frontage
- Is there an established agreement with Public Works regarding the frontage
- How long has the business been at this location
- Has the CUP expired
- Is the Applicant in compliance with past Conditions of Approval

Staff explained that Condition #16 was required as part of the 1992 use permit. The dedication of frontage is for curb, gutter and sidewalk improvement, implemented by Alameda County Public Works. Member Spalding said it would be helpful if staff reports were more specific, especially if land will be taken from the property owner. The current language does not clearly define the scope of the proposed improvements. Without clear definition the Applicant or Board Members cannot make an informed decision. Member Peixoto also thought Condition #14 required careful consideration. As it proposes the Applicant dedicate frontage. He did not think it was fair to the property owner. Member Spalding agreed. Staff further explained. Some of the Conditions were requirements of past permits. The conditions have been re-introduced, in the new application. The 1992 permit expired in 1995. The Applicant is expected to comply with all listed conditions of the new permit.

Board Members were concerned that if the Conditions had not been implemented, the Applicant may have no other option than to agree to current Conditions, in order to obtain approval.

Mr. Gold said the business had been operating since 1992. The CUP was requested in 1986. Business began at the site in 1992. The street improvements have not been implemented. They will take place in conjunction with street widening. He is committed to installing the improvements. An agreement is already in place with Public Works to dedicate, 7 feet of frontage. Public Works will compensate Mr. Gold for the frontage. Public testimony was closed

Member Peixoto said based on testimony. Condition #14 may no longer be necessary if an agreement is already in place.

Member Spalding agreed. If Condition #14 remained it may lead Public Works to believe they can obtain 14 feet of frontage. By purchasing seven feet, and requiring the Applicant to dedicate seven feet. Language should not be quite so flexible. In addition, the consideration of frontage should not be contingent upon the Applicant continuing his business. It has been in operation for years. The definition of "reasonable" could be open for interpretation. The use permit is only in effect, for 3 years. Would the Applicant be obligated beyond the permit expiration, there did not appear to be a nexus between the limited permit, and the permanent dedication of property. Member Spalding believed Condition #14 should be stricken. The Applicant can still provide staff, a copy of the agreement with Public Works.

County Counsel said there was documentation that Condition #14 was part of the 1992 contract. Member Spalding thought the language was problematic because, compliance means a contract has been performed. County Counsel acknowledged the responded the word compliance was executory.

Member Adesanya pointed out that Condition #14 was in accordance with the Future Width Line. This would prevent the frontage dedication from expanding beyond 7 feet. Although an agreement is in place between the Applicant and Public Works, at this juncture staff has not confirmed if the dedication has taken place. It may be premature to remove the Condition.

Member Spalding reiterated that the permit would be in effect for 3 years. The Applicant should not have to give up property, for a use that may or not be permanent. The Board has removed similar language in the past.

Member Adesanya added that Condition #14 is a carry over from the existing parcel map. Public Works would be obligated to act within reason. Member Spalding said she would not be in favor of approval, if Condition #14 remained. The Applicant has an agreement in place. Member Adesanya asked if the language would be acceptable with the word "dedication" removed. Member Spalding did not believe there was a nexus between giving up 7 feet of property frontage, to obtain approval for a CUP that will expire in 3 years. Member Adesanya said the nexus was not with the continuation of the use, but with the parcel map. The nexus is appropriate because it occurred when the Condition was originally imposed with the map. The Applicant should be able to provide documentation regarding the frontage. To confirm they are in compliance with the past use permit.

The Chair asked Counsel if it was appropriate to address the Future Width Line, and the sale of frontage within the CUP. Counsel said it appears that based on testimony an offer of dedication is already in place. The Applicant can provide the offer to Planning, as evidence of compliance. Once on file, Condition #14 can be removed from the CUP application.

Member Spalding said she still had issue adopting Condition #14. In place of Condition #14 more appropriate language could state: The Applicant shall provide the offer of purchase between the Applicant and Public Works within 30 days of approval. Counsel responded that a similar condition was probably a requirement of the 1992 CUP. It is unknown as to what was considered a nexus, at that time.

The language Member Spalding proposed should be sufficient to support prior compliance, with prior Conditions of Approval. Counsel then offered another example of proposed language for the current permit: The Applicant shall provide proof of compliance with prior Conditions of Approval. Member Spalding said she had issue with the word “compliance”. Compliance means that a contract has been performed. Language should clearly state that documentation, be provided. This should alleviate confusion as to if the contact has been conformed. Counsel agreed that the word compliance was interpreted as executory.

Member Peixoto referred to 1971 Case Law which requires that any Condition must further state the public purpose for which it was imposed. The property owner may not be required to carry a disproportionate load, in furthering the public purpose. County Counsel said the BZA did not have the underlying facts available, from the 1992 Hearing. The Conditions may be justified, based on the parcel map, for the term designated. Present staff is attempting to merely carry forward the prior Conditions, and provisions imposed in 1992. The inclusion of past Conditions of by a prior Board or Commission allows the Applicant to move forward with operation of their business. There is an assumption that the appropriate case law was complied with and that it was rational, reasonable, and that an appropriate nexus was established without the Applicant taking on insufficient burden. It does not appear there has been challenge to the Condition imposed in 1992. It also appears that the Applicant has complied with the Conditions of Approval. At this juncture the BZA is asking for evidence of that compliance. The documentation is not to re-visit the underling basis of the imposition. The Member Spalding asked if the Mr. Gold should provide a copy of the purchase, sale agreement. Counsel clarified that it is an offer of dedication that has not been completed at this point. The agreement probably has language that indicates at the appropriate time there is an agreement to sell the frontage, at a price to be agreed upon at that time.

Public testimony was re-opened to speak with Mr. Gold

Mr. Gold said originally the parcel had to be split, to create the facility. As a function of the split, he was asked to dedicate the frontage. The document was created at that time. The use permit process began approximately in 1986. The frontage was included as part of the permit 1986. He occupied the property in 1992. Mr. Gold further clarified the frontage will be purchased when Lewelling Boulevard is widened. He was never in objection with dedication of the frontage, just the gifting of the frontage. Several neighboring property owners had agreements for the sale, of frontage. When the County initially approached Mr. Gold, they asked that the frontage be gifted. Mr. Gold said he would only agree to a sale, not a gift. Eventually he did come to an agreement with Alameda County Public Works, to sell the frontage.

Member Spalding said she wanted to ensure Mr. Gold understood the concept of the 1971 Case Law, discussed earlier. Mr. Gold should not have to give up property, solely in order to continue to conduct business. Language should be clear, as property is a serious issue. There is substantial case law establishing property rights. Mr. Gold said at the time, he understood the agreement that had been entered into. He never interpreted the frontage agreement to be a requirement of continuance of his business. A copy of the agreement should be on file. A copy of the document can be provided, if necessary.

Based on Mr. Gold’s testimony, Counsel said Condition #14 can be re-stated. Mr. Gold can provide evidence of the irrevocable offer. Again the offer is probably not without just compensation for the applicant. Only that an agreement has been entered into, by the parties. Board Members asked if there was an individual document or a series of documents. Mr. Gold said he did not remember specifics. The only disagreement occurred when he was asked to give the setback, without compensation. Mr. Gold reiterated that said he would sell the frontage, not gift the property. There is an agreement which will provide financial compensation, for the frontage.

Member Adesanya recommended that Conditions #14 and #16 be stricken in conjunction with the CUP. The Conditions could be replaced with Counsel's recommended language, and tied to the Board of Supervisors Resolution from 1992. For example: The applicant shall submit evidence of compliance with Resolution Z-7454. Member Spalding pointed out that Mr. Gold indicated the frontage dedication was initiated as a result of the parcel split. Not the Conditional Use Permit. The BZA should not create Conditions in relation to the parcel map. The contract is already in place.

Member Adesanya said the 1992 action was in conjunction with Conditions contained in the 1992 Permit, C-6060. She did acknowledge the BZA did not have confirmation, as they did not have prior documents. Also it is unknown if the Applicant has complied with all Conditions, in prior permits. The item should be continued to conduct research, and allow Mr. Gold to provide the purchase agreement. Member Adesanya also asked staff to research the status of the parcel map. Member Spalding did not believe staff indicated the Applicant was non-compliant with the original parcel map. The Chair asked Mr. Gold if he was amendable to a continuance. He agreed. Public testimony was closed.

Staff will further research the necessity of Conditions #14 and #16. Member Spalding and Peixoto asked that any proposed Conditions, clearly state what is required of the Applicant. Staff will also verify that Parcel Map, PM-4585 is still in effect.

Member Gil motioned to continue C-8640 to September 24, 2008. Member Spalding seconded the motion. Motion carried 5/0.

2. **CHONG KO, VARIANCE, V-12110** - Application to allow expansion of a non-conforming use (Tavern) in an, ACBD – SP – R (Ashland and Cherryland Business District Specific Plan-Residential) District, located at 391 Lewelling Boulevard, north side corner northeast of Usher Street, unincorporated San Lorenzo area of Alameda County, designated Assessor's Parcel Number: 413-0011-030-04. **Staff Planner: Christine Greene.**

Staff described the project. The request is to expand a non-conforming use "tavern" by the addition of karaoke and cabaret. The recommendation was denial. Public testimony was opened.

Mr. Bernie Hare was present representing the Applicant Ms. Ko. Mr. Hare presented a draft of the agreement between Ms. Ko, and the owner of Moyer's Paints. The agreement allows joint use of the Moyers Paint, parking lot. The issue of parking had been contentious. The agreement should alleviate any parking questions. Ms. Ko confirmed she received a violation notice on February 15, 2008 from Code Enforcement. Since the bar was asked to cease the live entertainment (karaoke). There has been a 30% loss in revenue. This has had a dramatic impact. Karaoke has taken place at the bar for the past 20 years. There was a cabaret license. The prior owner passed away, after a long illness. Unfortunately it was discovered that the cabaret license had expired. Ms. Ko was unaware of this, when she purchased the business. A former employee, Ms. Mary Maderios is willing to swear an affidavit that she completed the paper work for the original cabaret license. She left employ but was re-hired when Ms. Ko took over the business. Regarding the property zoning, the non-conforming "karaoke use" was in compliance. Apparently there is now a question, as to if is still in effect. The karaoke is not an expansion of anything. It has always taken place. Ms. Ko received a notice in February that stated the karaoke was non compliant. Until now, there have been no, past complaints. Mr. Hare and Ms. Ko have read the staff report. He disagreed with Tentative Finding #3. A petition of support containing 40 signatures from surrounding business, and residents has been submitted. Affidavits have also been submitted by patrons, and Ms. Maderios. The live entertainment has taken place for many years. Mr. Hare contacted the

Sheriff's Department to inquire about the old cabaret license. They do not retain archive records. Mr. Hare was told he could apply for a new cabaret license. However it would be part of the larger Planning Department process. This precipitated the variance application. The parking agreement will improve safety. Patrons can drive through the parking area, eliminating the need to back out. Mr. Hare summarized. The present issue was as a result of an administrative oversight. With the sale of a food business, licensing and paper work is daunting. Paper work has simply fallen through the cracks. There is nothing nefarious. Ms. Ko has been conducting business within Alameda County, for years. If any issues do arise, Ms. Ko responds immediately. Board questions for Mr. Hare were as follows:

- What are the standard activities at the tavern
- Does the bar owner operate any other businesses
- How is the second story of the building used
- Does the bar have a permit for off-site alcohol sales
- Are cigarettes for sale at the bar
- Is there a permit for the "LOTTO" banner that is on the building exterior
- What are the Hours of Operation

Mr. Hare said the standard activity is live entertainment, singing. There is no food. There is a music machine. A bar, pool table and dart board. Ms. Ko also owns Guido's, on Manor Boulevard. This is also a karaoke bar. The LOTTO banner has now been removed. There is a Lotto machine in the bar. The California Lottery requires that you have a separate cash register for Lotto sales. The bartender is in charge. There is no license for off-site sale of alcohol or cigarettes. The second story is used for storage. There is also a small meeting room. The Hours of Operation are from 10:00 a.m. to 2:00 a.m. every night of the week.

Ms. Cathleen Fowler spoke in favor of live entertainment. She has been in the entertainment business all of her life. She sang for President Gerald Ford, and had an all female band in High School that played with Barbara Streisand. She is now in the karaoke business. It added excitement to her career. Karaoke is good for young and old, alike. People in the audience can enjoy advanced, as well as beginning singers. You also find professional singers participating. It is a good mix. Karaoke is very inspirational, and encourages participation. Karaoke is a wonderful form of activity that provides stress relief. At a karaoke bar, the staff controls the volume. The volume can be kept low so the neighbors are not disturbed. Throughout the past 8 years she has also managed several karaoke entertainment centers, including Dinos, Palomares Café, and Acapulco. Ms. Fowler has not been to the Usher Inn, but may collaborate with Ms. Ko, in the future.

Mr. Robert Fowler was present. He submitted comments, but did not wish to testify. The Chair read his comments into the record: There have been no complaints, from or to any departments regarding this business. There is no reason the variance should not be approved. Member Spalding said she understood that a complaint had been lodged, and that there was a code violation. As a result the Applicant is now going through the application process.

The Chair asked Mr. Hare to return to the podium to discuss the letter received from Moyers Paint. Mr. Hare said he and the owner of the Moyer's property had an understanding the lease would continue into perpetuity. If the Moyer's property were sold, the lease would be sold along with the property. Once the owner of Moyer's Paint signs the agreement, it will be final. The bar staff is responsible for all litter and clean up for the parking lot when the bar closes at 2:00 a.m. The music starts to wind down at 1:00 a.m. The business is closed by 2:00 a.m. Public testimony was closed.

Board questions for staff were as follows:

- If there is an inconsistency which takes precedence the General or Specific Plan
- Is the current General Plan in “draft” form
- Is the use considered non-conforming
- Was the bar in operation prior to changes in the Zoning
- Is a CUP required for a bar or tavern
- Would CUP requirements be dependant upon Zoning
- When did Zoning for the area change
- What is the definition of cocktail lounge
- Did the Ashland Association respond to the referral request
- Did the Cherryland Association respond to the referral request
- Does Alameda County Redevelopment have plans to upgrade the area

County Counsel said all plans must be consistent with the General Plan. If there is an inconsistency, the lesser will not take precedence. The General Plan is deemed under the Consistency Doctrine to be a Zoning Constitution for the County. Everything must flow from the General Plan. The bar pre-dated the change of Zoning. There is a General Plan in effect, as well as a Draft General Plan. The tavern does not need a CUP to operate because it preceded the General Plan that went into effect, in 1973. The tavern started in 1968. Any uses that were already in existence were grandfathered-in, and became non-conforming. Staff said there is no definition for cocktail lounge in the Zoning Ordinance. There is a definition for tavern. *“Tavern” means any premises where alcoholic beverages are offered for sale for consumption on the premises as its principal function, including: restaurants having a separate bar or lounge area; a restaurant with a bar located within the restaurant seating area; a restaurant which offers “happy hour” for alcoholic beverages or where or where alcoholic sales are in any other way promoted; or, a restaurant which advertises the sale of alcohol in any way other than on the menu; a winery, pursuant to its definition in this section, is exempted.*

Based on the existing General Plan, the overall zoning in the area is Commercial. This does take precedence over the Residential District in the Ashland Cherryland Business District Specific Plan. The Applicant could probably apply for a CUP for the bar under Commercial Zoning this would not address the non-conforming aspect which does not require them to obtain a CUP. They are allowed to continue operation because the business preceded the 1973 Zoning Ordinance.

There has been no response from the Cherryland Association. Ashland and San Lorenzo HOA’s had no comment as well as Alameda County Redevelopment.

Member Gil said she had attended a Redeployment Meeting. Street widening is proposed. She was unsure if further commercial development would occur. There are some façade improvements slated for Orchard Supply Hardware.

Member Peixoto said the setback was sufficient. Street widening should not impact the business. He then asked how the karaoke use was considered an expansion, if the use was within the same building. Counsel responded that the expansion was related to the nature of the use, not the physical scope of the use.

Member Adesanya asked staff if the Draft General Plan is re-designating the area for Commercial Use. The current General Plan also designates the area as Commercial Use. Only the Specific Plan from 1995 designates the area for Residential. When the new General Plan is adopted would the use once again become conforming. Staff confirmed the use could possibly be allowed once the General Plan is updated. Regarding the existing “R” designation within the Specific Plan only a few parcels are zoned Residential.

There is another parcel with the same "R" designation. When the most recent General Plan was updated the "R" Parcels were to retain their designation. Staff pointed out during the update. They believed this was an error / oversight. None the less, the parcels were adopted as, Residential. Staff has no documentation as to how long the karaoke use has been conducted.

Member Adesanya said it appeared a continuance would be appropriate to research the General Plan. Member Spalding asked that a referral response be obtained from Redevelopment. The owner may also want to consider landscaping.

Members asked staff to research the status of the Residential Zoning. Also when the General Plan update will take place. Confirmation should also be obtained that the General Plan does indeed take precedence. For example: If the property could be considered Commercial, the CUP process could be employed. This may be a more efficient, and thorough process. The land use designation must also be determined to ascertain the appropriate permit. Member Spalding requested the amount spent thus far be credited to the Applicant, if another type of permit is required. Staff confirmed that was possible.

Based on the addition documentation and research necessary, the Chair recommended a continuation. Staff will determine the land use designation, and the appropriate type of application. Re-notification may also be necessary. The application will be referred to the Cherryland Home Owners Association, and to the Alameda County Redevelopment Agency. The Applicant will provide documentation of any agreements made with Public Works regarding the County Right of Way.

Staff said as a general rule the karaoke use can continue, while research is being conducted. There is an on-going permit process. The Chair told the Applicant that although the karaoke can continue until the October 8, 2008 Hearing. If there are any complaints received regarding noise etc, the facility, and the use. The bar is subject to compliance with the Sheriff's Department.

Member Peixoto motioned to continue Variance, V-12110 to the October 8, 2008 Meeting. Member Spalding seconded the motion. Motion carried 5/0.

DISCUSSION OF PROPOSED CHANGES TO WEST COUNTY BOARD OF ZONING

ADJUSTMENTS RULES AND PROCEDURES: The Chair continued the discussion of proposed changes. Although copies had previously been distributed, additional copies were not available at the meeting. Duplicate materials will be included in the next meeting packet.

APPROVAL OF MINUTES: Member Peixoto motioned to accept the Minutes of July 23, 2008 as modified Member Spalding seconded the motion. Motion carried 5/0.

STAFF COMMENTS & CORRESPONDENCE: Staff announced that the appeal for Variance, V-12117 – Silva would be heard at the September 9, 2008 Board of Supervisor Hearing. The BZA denied the application request.

BOARD'S ANNOUNCEMENTS, COMMENTS AND REPORTS:

Member Spalding commented that she read an article in the newspaper regarding the Ordinance Review Committee. Among one of the issues being discussed was the possible elimination of notice posting on telephone poles. Member Spalding believed that the posting method should not be eliminated. It is visible, and many community members rely on the method. Although one of the drawbacks is out dated notices, perhaps the committee could identify a removal process. Member Spalding thought increasing the current notification radius of 300 feet to 500 feet, was a good idea. Member Gil said she was present

at the meeting. Another point raised was that in rural areas. A 500 foot radius may not be sufficient.

Regarding the Committee discussion that the Applicant be responsible for generating public notice, it probably is not a good idea. The public entity has a duty to prove notice of their position. Staff explained that the suggestion was that the Applicant provide a sign in front of the proposed location, this would serve as a notification method. Member Spalding said the method may be sufficient on a small site. However a single sign may not be effective on a larger property. The Chair said that depending on design. Signage may have an unappealing, or foreboding affect.

The Chair commended Code Enforcement, especially Bruce Babcock for all of the hard work. There has been an increase in abatement sites with complicated issues which require a multi-phased resolution process. Staff follow-up has been excellent.

Member Spalding said a perfect example was the Item #1 on the Code Enforcement Agenda. She realizes demolition has not been method Code Enforcement has employed in the past. However this property may be a good candidate based on the impact to neighborhood, and the extreme blight.

Member Gil requested staff repair the clock in the Public Hearing Room.

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

ALBERT LOPEZ - SECRETARY
WEST COUNTY BOARD OF ZONING ADJUSTMENTS