

**MINUTES OF MEETING
WEST COUNTY BOARD OF ZONING ADJUSTMENTS
SEPTEMBER 24, 2008
APPROVED NOVEMBER 12, 2008**

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; Yvonne Bea Grundy, Recording Secretary.

There were approximately 11 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.

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.

NEIGHBORHOOD PRESERVATION ORDINANCE ABATEMENT HEARING

- 1. MYUNGHO AND JEONG LEE 325 Laurel Ave., Hayward, CA 94541**
In violation of Alameda County Ordinance Section 6.65.030 F(6) and M (1).
 1. Graffiti on the fence.

Member Peixoto motioned to uphold the staff recommendation. Declare the property a public nuisance, require abatement to be completed within 10 days. The Vice Chair seconded the motion. Motion carried 3/0. Member Spalding abstained and did not participate. Member Adesanya did not participate, as she had not yet arrived.

- 2. DANIEL P. MARTIN 16545 Rolando Ave., San Leandro, CA 94578**
In violation of Alameda County Ordinance Section 6.650.030 A (1 & 2), D(1) and M (1).
 1. Debris and miscellaneous items on property.
 2. Weeds.

The Vice Chair motioned to uphold the staff recommendation. Declare the property a public nuisance, require abatement to be completed within 10 days. Member Spalding seconded the motion. Motion carried 4/0. Member Adesanya did not participate, as she had not yet arrived.

- 3. HIGHLANDER HOLDINGS 19755 & 19759 Meekland Ave., Hayward, CA 94541**
In violation of Alameda County Ordinance Section 6.650.030 D A(1&3) and M (1), 17.12.030, 17.52.290, 17.52.290
 1. Outdoor storage yard on residential property.
 2. Inoperative vehicles.
 3. Containers and motor homes.
 4. Scaffolding, junk, debris and miscellaneous items on the property.

Member Adesanya motioned to uphold the staff recommendation. Declare the property a public nuisance, require abatement to be completed within 30 days. Member Spalding seconded the motion. Motion carried 5/0.

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 Number: 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, April 23 and August 28, 2008; To be continued to October 8, 2008). **Staff Planner: Christine Greene.**
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, April 23 and August 27, 2008; to be continued to October 22, 2008). **Staff Planner: Christine Greene.**
3. **T-MOBILE / CHURCH OF THE NAZARENE, CONDITIONAL USE PERMIT, C-8478** – Rehearing of an Application to install and operate a wireless telecommunications facility in an R-1-CSU-RV (Single Family Residential, Conditional Secondary Unit, with Recreational Vehicle) District, located at 2301 Miramar Avenue, north side, 100 feet west of Crest Avenue, unincorporated Castro Valley, and designated Assessor’s Parcel Number: 080A-0191-034-04. (Continued to October 8, 2008). **Staff Planner: Christine Greene.**
4. **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, July 9 and August 27, 2008; to be continued to October 8, 2008). **Staff Planner: Pat Anekayuwat.**

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

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) 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 reviewed the history of the application. The Castro Valley Municipal Advisory Council recommended approval with modifications to Condition #4. The CVMAC would like to review the landscaping plan and submit comments to the Planning Director, prior to final approval. Member Adesanya recused herself and did not participate. She formally represented the Applicant as a Project Planner when they obtained their prior use permit. Public testimony was opened.

Mr. Hugh Fussell a Director of Bay Gospel Halls was present. The church has been at the site for 3 years. Thus far things have gone well. At first there were a few issues with the neighbors. All issues have now have been resolved. The application was originally submitted to the Building Department a year ago. The church has recently received a response. The application for the new meeting hall will be re-submitted by the end of September. Due to the extended length of time, a new architect had to be retained. The goal is to break ground after the 2009, rainy season. Completion date is anticipated in 2011. Board questions for Mr. Fussell were as follows:

- Has Mr. Fussell read the staff report
- Is the church in agreement with Conditions of Approval, including Hours of Operation
- What side of the parcel is considered the site entry
- When will the landscaping be installed
- Where will the fencing be located
- What is the next step in the permit / application process

Mr. Fussell said he had briefly read the staff report. The Conditions of Approval are similar to conditions in the prior permit. The proposed hours are acceptable to the church. Sundays from 6:00 a.m. to 9:30 p.m., Monday – Saturday 8:00 a.m. to 9:30 p.m. One Saturday per month and occasional weekdays, meetings can start at 6:00 a.m. Mr. Fussell explained the placement of the proposed fence at the southwest corner, is to protect the line of site of the neighboring property. The fence will be set back, eight feet. The church would like to install the improvements prior to adding landscaping for the site. As of yet the fence, and proposed landscaping is not indicated on the modified Site Plans.

Staff suggested Condition #9 be modified to include the CVMAC review and recommendation of final approval of the landscaping plan. This review will take place prior to the Planning Director's final approval. As Condition #9 applies to the permit process. At this juncture the application is undergoing Building Department, plan check approval. Public testimony was closed.

Member Spalding motioned to adopt the staff recommendation of approval with the modification of Condition #9. Condition #9 shall include the following language: Final verification of the landscape plan is required by the Castro Valley Municipal Advisory Council, prior to approval by the Planning Director. Member Peixoto seconded the motion. Motion carried 4/0. Member Adesanya abstained and did not participate.

2. **JOSE & GUILLERMINA RAMIRO, CONDITIONAL USE PERMIT, C-8747** - Application to allow continued operation of a tavern (Stadium Club), 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.**

Staff recommended approval of the application. Member Peixoto asked if the Applicant was in compliance with existing Conditions of Approval. Staff was unsure. The staff report was completed a week prior. Photographs were submitted to the Board. The Chair observed there were some exterior signs posted. Member Spalding pointed out that the required signage, Persons under the age of 21 are not allowed and a No Smoking sign were not posted. Public testimony was opened.

Craig Martin, Esquire was present, representing the Applicants. Mr. Martin said his clients were basically in agreement with the proposed Conditions of Approval with the exception of the Hours of Operation, and the requirement of 2 security guards. Mr. Martin requested the hours reflect the Alcohol Beverage Control standard of 6:00 a.m. to 2:00 a.m. Only two complaints were received this year. When the Sheriff's Department responded there was no longer any issues. The parking configuration has not changed since the building was constructed. Mr. Ramiro did talk with the owner of the doughnut shop. The shop is closed at night. A total of 10 cars can park at the site. There is also a shopping mall across the street which can supply parking. In the event additional parking is needed during the evening hours. The car wash across from the site can be used. Parking for the Stadium Club should be "Grandfathered in" as the configuration cannot be changed in any way. Mr. Martin requested a 3 year permit length. As there have been no complaints from customers. Mr. Ramiro will post any outstanding signage.

Initial Board questions were as follows:

- Does the Applicant have a contract for 2 security guards
- Is the Applicant aware conditions are to be in compliance, prior to issuance of a new permit
- How would the facility be utilized during the day time, morning hours
- Has Mr. Martin had contact with COMPRE
- Can the Applicant provide a copy of their Alcohol Beverage Control License
- Is food served at the bar

Mr. Martin confirmed he had talked with COMPRE. He also contacted the Sheriff's Department to inquire about the history of the site. The present clientele is mature. They mainly shoot pool and have a beer. Not of a lot of young people frequent the Stadium Club. The Chair gave Mr. Martin a history of the establishment, as he is fairly new to the application. In the past there were lots of issues. Public drunkenness, neighbors with blocked driveways, loitering, and prostitution. The Chair witnessed prostitutes outside of the building herself, as well as stumbling drunks. She admitted things had improved greatly in the past year. Her ongoing concern was the Applicant interfacing with the Sheriff's Department. At prior hearings Mr. Ramiro said he did not contact the Sheriff because if there was an issue. He preferred to handle it himself. Many of the neighbors do not contact the Sheriff either, possibly as a result of a language barrier.

Mr. Martin told the Board, the past year at the Stadium Club had been quiet. The Applicant is substantially in compliance with his permit. There is no food served at the bar. The 1996 CUP did allow food, when the permit was renewed the Applicant decided to stop food service. A certificate from Environmental Health would have been required. There are private events at the bar. Guests bring their own food, and take it when they leave. Food is not served to the customers. The Chair asked if children attend any of the private events. Mr. Martin confirmed adults only are allowed in. If an issue does arise, Mr. Ramiro does not hesitate to contact the Sheriff. As a business owner, he also likes to diffuse any

incidents. There is an active ABC License. If Mr. Ramiro were allowed to use the standard hours of operation employed at other ABC outlets. The current tavern use would operate in the same manner. Member Spalding did not believe the Applicant was in substantial compliance. A year had passed since the last permit, and there were still outstanding issues. Exterior signage is an example. Mr. Martin said the Applicant fully intends to comply with all Conditions of Approval. One of the reasons Mr. Martin was hired was to assist with the language barrier. Mr. Martin ensured the Board that all outstanding issues would be resolved.

Mr. Alfredo Coria, Field Investigator for COMPRE read the 2006 Sheriff's crime report. In 2006 there were 92 reports of disturbing the peace, 32 reports of vandalism; a call for service for; aggravated assault, sexual battery; and drunken in public. The staff report only lists 3 calls. Mr. Coria did thank the Ramiro's for improving the exterior lighting, and attending the Serve Safe alcohol training. The added landscaping is also very nice. COMPRE is in support of permit renewal, only if the Applicant is in full compliance. An on-going issue is patron smoking in front of the establishment. This is causing litter issues with cigarette butts, and trash. COMPRE is also opposed to any change in the Hours of Operation. Mr. Coria said he had talked with the neighbors. They like the calmer surroundings. They would like it to continue, and to live without intimidation. Mr. Coria recommended a 1 year permit, to ensure adherence with on going Redevelopment plans. Mr. Coria conducted a site visit on June 26, 2008. He did see 2 security guards, 1 in the front of the establishment, and another in back. The visit occurred during the day. The Chair thanked COMPRE for their community outreach.

Mr. Martin returned to rebut the testimony of Mr. Coria. Mr. Coria has only been to the location a single time, this year. Most of the incidents he sited have not been substantiated. There is no foundation to support the conclusion that the Hours of Operation are linked to a reduction in crime. Cigarettes are a serious matter. A receptacle will be placed outside, immediately. The receptacle will be cleaned throughout the work shift. Signage will also be posted outside. Currently there is signage regarding smoking posted, on the building interior. Mr. Martin asked the Board to extend the Hours of Operation due to the financial impact to his client. Mr. Ramiro is willing to submit to a 6 month review of the ABC Rules, and Hours of Operation. The Board can set the hearing date in advance. The Ramiro's want to be good neighbors and do not intend to flaunt any rules. Member Adesanya asked Mr. Martin the following:

- How long had Mr. Ramiro owned the bar
- How would an extension of the Hours of Operation assist the Applicant

Mr. Martin said the increased hours would allow Mr. Ramiro to earn more revenue. If the Board saw fit Mr. Ramiro would also agree to an incremental increase, in Hours of Operation. A review could be conducted within 1 year. This would allow the Applicant to show compliance to State rules. In the event Mr. Ramiro cannot comply. His license can be revoked. Mr. Martin then presented Serve Safe Certificates for the Applicants.

Member Spalding informed Mr. Martin there had been prior Counsel for the Applicant. Thus far the Applicant has not complied with all, Conditions of Approval. She asked Mr. Martin if in his opinion the Applicant could bring all outstanding issues into compliance, within 30 days. Mr. Martin assured the Board Mr. Ramiro would be instructed to bring all issues into compliance, as soon as possible. The goal would be, the end of the week. Mr. Martin said in all fairness the Applicants were substantially within compliance. He would deal with the Board in good faith, on behalf of his client. Member Spalding reminded Mr. Martin that the 185 foot smoking ban within an entrance of a building must also be complied with. Mr. Martin said the goal is to take care of all outstanding issues. To ensure Mr. Ramiro does not have to return.

Mr. Coria was asked by the Board to offer comment in response to Mr. Martin's statements. Mr. Coria

said the Stadium Club was moving in the right direction. There had been vast improvement. However COMPRE circulated a petition in the surrounding neighborhood to obtain opinions. The Hours of Operation were limited based on the 25 signatures obtained. If the Hours of Operation were increased, problems may re-surface. Mr. Coria clarified that Alcoholic Beverage Control did not have a mandatory rule that allows establishments to open at 6:00 a.m.

Senior Planner Sonia Urzua was present to provide Spanish translation, if the Applicant requested. Mr. Ramio accepted the translation assistance. Mr. Ramiro was willing to accept a review period to demonstrate he can do better than before, with the later hours. Member Adesanya asked Mr. Ramiro how business had been going. Mr. Ramiro said the business is failing. Due to the reduction in hours he has lost a lot of money. Customers have to leave at 11:00 p.m. Customer volume has dropped off every day of the week, even on Sundays. The Hours of Operation prior to the reduction were from 4:00 p.m. to 2:00 a.m. every night of the week.

Board questions for the Applicant were as follows:

- Does the reduction of 1 hour affect the volume of business
- What time is the most active
- Does the Applicant have an active security contract
- Do customers feel more secure with security staff at the site
- Can music be heard from the exterior of the bar

Mr. Ramiro said he did not have an active security contract. He has not had a business volume, sufficient to support 2 security staff. The Security Company requires a minimum of 30 hours per week. The music is turned down at approximately 11:00 p.m. on Fridays and Saturday nights. Mr. Ramiro ensures there is no violence, and that fights do not break out. Mr. Martin clarified. The Applicant self polices the site. There have been no recent complaints. This supports the effectiveness of the self policing. The Chair said she did not necessarily agree. Member Spalding suggested a contract for 15 hours per week, might be acceptable.

Ms. Cheryl Anderson told the Board that she has been a customer for a year and one half. Her husband is a Salsa instructor. Since she has frequented the Stadium Club she has become friends with the owners. Ms. Anderson said Mr. Ramiro and his staff patrol the restrooms for any drug activity. She has frequented other clubs accompanying her husband. Other establishments do not have the same comfortable feel. At another club in Berkeley she frequents. There are always fights. The Ramiro's make sure there is no violence. If there is an issue, it is resolved right away. Ms. Anderson said she also feels comfortable going to the Stadium Club without her husband. There is possibly a language barrier, regarding the smoking issue. People may not be aware of the laws. The sound from the interior does not travel far outside the bar. Ms. Anderson said an increase of 1 hour would have a positive impact on dancing. When you go dancing most people do not frequent a place that closes at 1:00 a.m. Just as the party gets going, the night is over. You do not have time to get to another bar or club, at that late hour. Member Adesanya asked which nights had better crowds. Ms. Anderson said Friday and Saturday nights had the most customers. On Sunday there is approximately half of the usual crowd. Most of the customers come to play pool. Customers usually find parking on the side, or front of the bar. They try not to park in front of peoples homes. She heard there were problems in the past, but she feels safe. The Chair asked Ms Anderson if she had witnessed any rowdy people being ejected from the bar. Ms. Anderson said she had not. Mr. Ramiro and the bar tender patrol often. If they see any issues they approach the person immediately.

Member Adesanya asked Mr. Coria if he would like to add comments to the prior discussion. Mr. Coria

told the attorney for the Applicant that the Hours of Operation had been appealed to the Board of Supervisors, during the prior hearing process. The BOS upheld the Board of Zoning Adjustment's decision. Mr. Coria said he was strongly opposed to an extension of the hours. The surrounding community is at high risk. In May 2007 the Hours of Operation went until 2:00 a.m. After a review of Sheriff, service calls COMPRE had a community meeting. The neighborhood thought it was reasonable to have the hours reduced to 11:00 pm., as a result of the activities at the neighboring carwash. Members of the community also moved out, due to the activities at the bar. The reduced hours were enacted for the common good of the community. Member Spalding pointed out that the staff report listed the closing time at 9:00 p.m. Monday through Thursday. Mr. Coria said he was mistaken. The closing time Monday through Thursday was at 9:00 p.m. Board questions for COPMRE were as follows:

- Is COMPRE willing to speak with the community about the possibility of increased hours
- To what hour would the Board consider an extension
- Would COMPRE be amenable to a continuance of the application
- Would COMPRE be willing to speak with the Sheriff's Department
- Would COMPRE be willing to speak with the Applicant

Mr. Coria said COMPRE wanted to be fair. They would not oppose the bar opening earlier during the daytime. They would speak with the Sheriff, the Applicant, and the community. He reminded the Board that in the past community members had their driveways blocked as well.

The Chair then pointed out that the current number of hours are 73 total. If the Hours of Operation were changed, hours would be reduced to a total of 70 hours. Member Adesanya did not understand the rationale in additional hours through the lunch break. Member Spalding added that the site including the landscaping, had improved. Member Adesanya thought that if a time frame for incidents were established. Documentation could support a window in which, it may be acceptable to extend the hours. It may make more sense to extend the entertainment on Friday, and Saturday. Public testimony was closed.

Member Spalding noted the time during which, incidents had occurred at the site. One incident was at night, and the issue was parking. Member Peixoto pointed out that the parking incident may not be affiliated with the Applicant's business. The Vice Chair noted that the City of San Leandro Police responded to the incident. Member Adesanya did not feel that one recent incident, was necessarily relevant to the Stadium Club. Board Members asked for a copy of the 2007 Sheriff's report.

Member Peixoto said the site only contained 2 parking spaces in the rear. Evidently the Applicant could not come to an agreement with the owner of the doughnut shop. The Applicant also has not presented a copy of the security contract. In addition the Applicant testified that he cannot afford security. The Condition which required the posting of signage on the building exterior has not been met. The Board does not want to impend on a small business person making a living. However with these outstanding issues, it appears the business cannot ensure Conditions will be met. In either case he is unwilling to wait another 13 months for outstanding issues to be brought into compliance.

Member Spalding pointed out the Sheriff's Department was opposed to the prior application. Also one of the prior conditions was the retention of a security company. Member Spalding said she was not willing to recommend approval at this juncture. She would not be opposed to a 30 day continuance. This would give the Applicant time to bring outstanding issues into compliance. Ultimately the fact that the Redevelopment Agency is not in favor of approval, is an issue.

Member Adesanya said it may be more useful to alter proposed Conditions so the security person can

room the site. Perhaps the security contract can be altered to use 1 person.

Member Peixoto thought a determination of the Redevelopment Agency's intent should be established. They may want to have the site vacant for a period of 5 years.

The Vice Chair thought the Applicant should post the exterior signage now, as a show of good faith. If the Hours of Operation are extended in the future, signage can be altered. At this juncture she was not inclined to recommend approval when previous Conditions have not been met. If there is a continuance, a review of Conditions should take place within 90 days. This will allow timely reaction, in the event issues do arise.

Member Adesanya said that initially she was not in favor of an extension of Hours of Operation. However when the business owner spoke about business dwindling away she wanted to ensure the intent was clear. It is not the Board's intent to enforce Zoning to the point of driving businesses away. The intent is to have business compatible with surrounding properties. Member Adesanya was not on the Board of Zoning Adjustments when the application was last heard. One observation she made was that the petition circulated in the neighborhood during the last hearing process was, the language. Had the choices been phrased differently, such as a choice of Hours of Operation, the survey outcome may have been different. If the increase to the Hours of Operation were an additional hour per day, there may not be a negative impact on the neighborhood. A chronology of issues that have occurred may show a pattern day vs. night. Member Adesanya thought the Applicant should bring Conditions 6, 7 and 8 into compliance prior to the next hearing, if the application were continued. If the Members were inclined to approve the application presently, Conditions 6, 7 and 8 should be brought into compliance within 20 days.

The Chair said that she had personally observed some of the past issues. She witnessed prostitution outside of the establishment at approximately 9:00 p.m., also inebriated persons on the street. In past the Chair did see a security person on duty. Since last year there has been a dramatic difference, and improvement at the site. She believed the security guard did have an effect. The Chair said she was reserved about extending the Hours of Operation. She acknowledged that a patron who lives in Berkeley came to testify. However she would also like input from local neighborhood people regarding the extension of hours. As it would have the most impact on the quality of life, for neighborhood people. She would put their priorities and concerns, first.

Member Spalding thought it would be helpful to hear from the Sheriff's Department. The Applicant and COMPRE should also talk to with the Sheriff's Department.

Member Spalding motioned to continue C-8747 to November 5, 2008. Staff will provide an update as to any prior Conditions of Approval that the Applicant has complied with. Staff will confer with the Sheriff's Department, regarding the reported times of prior incidents. Comments should also be obtained from the Sheriff and COMPRE regarding their opinion on extended hours.

A representative from the Sheriff's Department shall also be present at the November Hearing. Referral, re-notice of the November 5th Hearing shall be sent to the Hillcrest and Ashland Homeowner Associations. The Vice Chair seconded the motion. Motion carried 5/0.

The Chair called for a brief recess at 4:00 p.m. The Hearing was reconvened at 4:06 p.m.

3. **ANTHONY & MARTHA CASSINI, VARIANCE, V- 12107** – Application to allow a wrought iron fence, four feet, nine inches in height where two and four

feet are the maximum allowed, in an R-1- (Single Family Residence) District, located at 16006 Via Harriet, south side, corner southwest of Via Catherine, unincorporated San Lorenzo area of Alameda County, designated Assessor's Parcel Number: 411-0045-077-00. (Continued from May 28, 2008). **Staff Planner: Richard Tarbell.**

Staff reviewed the history of the application, and recommended denial. The application was continued from the May 28, 2008 Hearing. Member Peixoto referred to page, #2 of the staff report. The applicants had received approval from the HOA in 2004. He asked staff if the San Lorenzo Homeowners Association submitted an updated referral response. Staff has not received any updated communications. Public testimony was opened.

The Applicants, Anthony and Martha Cassini were present. Per the Board's instructions Mr. Cassini took photographs of other fences in the neighborhood that were located in the public right of way. The photographs are included in the staff report. Mr. Cassini also spoke with John Rogers in Public Works. Mr. Rogers said the issue was that the street sign pole was located inside of the fence. He was not willing to provide Mr. Cassini with written documentation this was acceptable to the Public Works Agency. However he did agree to a verbal hand shake agreement that Public Works staff could enter the Cassini's yard if maintenance was required. The verbal agreement was acceptable to the staff Planner as well. Board questions for the Applicants were as follows:

- Are the Applicants aware that the staff recommendation is denial
- Did Public Works verify the fence was located in the Public Right of Way
- Can a section of the fence be moved
- Are the fence posts sunk in concrete

Mr. Cassini acknowledged the staff recommendation of denial. However he did not think the fence should be an issue for the County. Public Works has given him a verbal okay. The only issue is the sign post, and he has given Public Works permission to access it. The fence pillars are encased in concrete. He could move a section of the fence on the Via Harriet side, but it would be difficult. The wrought iron fencing material is see-through, and should not cause sight distance issues. There is a solid concrete fence located on Via Arroyo which exceeds the allowed height limit. It is also located the Public Right of Way. There are multiple fences within a quarter mile radius. Public Works has not required abatement. Mr. Cassini said only the upper peak portions of the fence, exceed the height limit. The peaks can be altered. Many people comment on the attractive fence. The Chair reminded Mr. Cassini the only accurate method to determine encroachment into the right of way is to conduct a survey. Also a compliant was submitted to Alameda County Code Enforcement.

Mrs. Cassini said this was the third time they had been before the Board. They were told at first the issue was height. Then Public Works told him the only issue was access to the sign post. The Cassini's home is located close to a school. Prior to the installation of the fence, kids ran through the yard, and deposited trash. Others would walk their dogs and leave waste. Children also constantly played on the sign post. There has been an increase of vandalism in the neighborhood. Windows have been broken out of homes, and 3 cars have been stolen. Public testimony was closed.

Board questions for staff were as follows:

- Did Public Works confirm the fence was located in the right of way
- Will the proposed County Design Guidelines include an increase in fence heights
- When will the new County Design Guidelines be adopted

- Can the Applicant be indemnified by the County
- Is there documentation of other verbal agreements between an Applicant & Public Works

Staff said Public Works did confirm the fence was located within the right of way. They were unaware of any documented cases of handshake agreements to indemnify property owners. If Public Works agreed they would be responsible for maintaining the fence. There is a proposal to increase fence heights in the upcoming Design Guidelines. Staff estimated it would take 6 months to bring proposals before the Board of Supervisors.

Member Peixoto pointed out that a 2 foot high fence could keep children out of the yard. The Chair said in her neighborhood there had been issues with lower fence heights. People jump the fence, and still enter properties. Liabilities may also arise if someone is injured, jumping a fence. Member Peixoto acknowledged the property was in good shape. However the fence is the public right of way. He did not believe the required findings could be met.

Member Peixoto motioned to uphold the staff recommendation of denial. The motion died, due to lack of a second.

The Vice Chair excused herself briefly to contact Public Works. Board discussion continued. Member Adesanya acknowledged that one option was to deny the permit. However the composition of the fence material did not cause obstruction. The fence would not cause a public detriment. Perhaps the Design Guidelines can provide some remedy. County Counsel said that Public Works should issue an encroachment permit for anything in the right of way. The Board also had the ability to continue the application until such time the Design Guidelines are set.

The Vice Chair returned to the Hearing. She talked with John Rogers. Mr. Rodgers confirmed he did discuss a hand shake agreement with Mr. Cassini. The Applicant is being truthful.

Member Adesanya motioned to continue Variance, V-12107 for a period of six months to allow progression of the proposed Alameda County Design Guidelines. The Vice Chair seconded the motion. Motion carried 5/0.

Member Spalding requested that staff make the Cassini's aware of the upcoming Design Guideline meetings. As their application could be affected by the out come.

4. **PETE CHACON, VARIANCE, V-12128** - Application to allow expansion of a non-conforming use (four existing units where two are allowed); and a 10 inch side yard where eight feet is the minimum required in an R-2-B-E (Two Family Residence, 8,750 square feet, Minimum Building Site Area) District, located at 21772 Vallejo Street, northeast side, approximately 500 feet northwest of Sunset Boulevard, unincorporated Cherryland area of Alameda County, bearing Assessor's Parcel Number: 428-0006-040-00. **Staff Planner: Donna Vingo.**

Staff recommended approval. Public testimony was opened. Ms. Jerry Barry testified that the garage was built in 1903, along with the home. Ms. Barry has extended the rumpus room. The objective is to create an indoor laundry room. The garage will be attached to the home. She would like to keep the existing line of the setback. If the setback is moved, it will affect the fence to the adjacent property. The fence serves as a security barrier. Altering the setback would also expose Ms. Barry's home to the street. There are four legal non-conforming apartments on the site. Staff further explained that the 10 inch side yard will remain. The addition will serve the purpose of connecting the home to the existing garage. The

existing line will remain. Further Board questions were as follows:

- Can the garage be demolished
- Is there a structural requirement to retain the existing setback
- Is the site located on a hill

Ms. Barry told the Board she would like to utilize the existing structures. To meet the setback requirement she would have to also demolish the side wall of her home.

Ms. Vanessa Chacon was present representing the Chacon Construction. The new family room would be added to the existing garage. The goal is to keep the existing structures in their present location. Ms. Chacon confirmed the client preferred to keep the present setback. Although there was no structural reason to meet current codes, a change in the setback would expose the home to the street. There is also a County easement on Montgomery Street for sewer and emergency vehicles. There can be no encroachment onto the easement. Public testimony was closed.

Member Spalding asked fellow Board Members if anyone had visited the site to confirm that it was well maintained. Member Peixoto confirmed he had been to the property, and it was well maintained. The site was immaculate.

Member Peixoto motioned to uphold the staff recommendation of approval with the adoption of Tentative Findings. The Vice Chair seconded the motion. Motion carried 3/1/0. Member Adesanya was not in favor of the staff recommendation. Member Spalding abstained, and did not participate in the vote.

APPROVAL OF MINUTES: Member Adesanya motioned to accept the Minutes of September 10, 2008 as amended. Vice Chair Gil seconded the motion. Motion carried 3/0. The Chair abstained. Member Peixoto did not participate, as he was not present at the September 10, 2008 Hearing.

STAFF COMMENTS & CORRESPONDENCE: Parcel Map, P-9566 Kremer will be heard by the Castro Valley Municipal Advisory Committee on October 13, 2008. The Committee will forward their recommendations to the Board of Supervisors. Member Spalding asked staff to ensure the CVMAC had a clear understanding as to the BZA's basis of denial of Variance, V-12080.

BOARD'S ANNOUNCEMENTS, COMMENTS AND REPORTS: The Vice Chair announced she not be present at the November 5, 2008 Hearing.

ADJOURNMENT: There being no further business, the hearing adjourned at 5:06 p.m.

ALBERT LOPEZ - SECRETARY
WEST COUNTY BOARD OF ZONING ADJUSTMENTS