

**MINUTES OF MEETING  
WEST COUNTY BOARD OF ZONING ADJUSTMENTS  
OCTOBER 8, 2008  
(APPROVED JANUARY 14, 2009)**

**FIELD TRIP: 1:30 p.m. The Field Trip was cancelled.** Members visited the property on an individual basis.

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

1. **DEANNA WOOD, CONDITIONAL USE PERMIT, C-8766** - Application to allow a beauty shop (hand and foot spa) with concurrent sign review, where Group A Uses are generally prohibited, in a SUB 10 CVCBDSP (Sub Area 10, Castro Valley Central Business District Special Plan) District, located at 3726 Castro Valley Boulevard, north side, approximately 100 feet east of Yeandle Avenue, unincorporated Castro Valley area of Alameda County, bearing Assessor's Parcel Number: 084C-0724-123-00. **Staff Planner: Damien Curry.**

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

**MEMBERS PRESENT:** Chair, Dawn Clark-Montenegro; Vice Chair, Kathy Gil; Members, Jewell Spalding.

**MEMBERS EXCUSED:** Members Frank Peixoto and Ineda Adesanya.

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

There were approximately 8 people in the audience.

**CALL TO ORDER:** The meeting was called to order by the Chair at 6:00 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. **MARIA L. CISNEROS, 179, 181 & 183 Sunset Boulevard, Hayward, CA 94541**  
In violation of Alameda County Ordinance Section 6.65.030 A (1), A (3), A (4), M (1) and Junk Vehicle Ordinance 6.48.
  1. Unlawful outdoors storage of debris, furniture, wood, boxes, mattresses, garbage, tires, metal, refrigerator, miscellaneous items and several inoperative vehicles.

Member Spalding motioned to declare the property a public nuisance and require abatement to be completed within 15 days. The Vice Chair seconded the motion. Motion carried 3/0.

2. **ROBERTO MANDUJANO, 728 Bockman Road, San Lorenzo, CA 94580**

In violation of Alameda County Ordinance Section 6.650.030 F (6) and M (1)

1. Graffiti on side fence.

The Vice Chair motioned to uphold the staff recommendation. Declare the property a public nuisance and require abatement to be completed within 10 days. Member Spalding seconded the motion. Motion carried 3/0.

**CONSENT CALENDAR:**

1. **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 from September 24, 2008; to be continued to October 22, 2008). **Staff Planner: Sonia Urzua.**
2. **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; continued to October 22, 2008). **Staff Planner: Pat Anekayuwat.**
3. **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 and June 25, 2008. (Continued from July 9 and September 10, 2008; to be continued to November 5, 2008). **Staff Planner: Jeff Bonekemper.**
4. **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. (Continued from August 27, 2008; to be continued to October 22, 2008). **Staff Planner: Christine Greene.**

The Chair asked staff if the Applicant for Variance, V-12110 had paid their fees due to Alcohol Beverage Control. Staff confirmed outstanding fees had been paid.

Member Spalding motioned to accept the Consent Calendar as presented. The Vice Chair seconded the motion. Motion carried 3/0.

#### REGULAR 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, 1487<sup>th</sup> 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, August 28 and September 24, 2008). **Staff Planner: Christine Greene.**

Staff recommended denial of the application. Staff gave an update to page 6, item #2 of the staff report. The Mobile Business Ordinance states that the same or similar permanent businesses shall not be located within 300 yards. The Ordinance does not give a definition of "similar businesses". The planner that worked on the Ordinance update said the intent applied to fast food type restaurants, and not necessarily to establishments that sell the same type of food. Within 300 yards of the site there is 1 fast food restaurant. Carmen's BBQ is located across the street. There are 2 fast food type restaurants approximately 900 feet away. On A Street and Garden Avenue there is a pizza restaurant. A block to the west is a coffee shop. If the Board takes the Ordinance interpretation to mean similar type food. There is similar restaurant next to the pizza restaurant called Little Mexico. Initial Board questions were as follows:

- Does the Ordinance give seniority to business in existence for a long time
- Does the Ordinance give preference to brick and mortar establishments
- What additional improvements are planned for the immediate area
- How many past applications have been approved for the site
- Have the old storage tanks at the site been secured

Staff said priority was not given to businesses in existence for extended periods of time. The Intent of the Mobile Restaurant Ordinance is to encourage brick and mortar establishments. There was a use permit issued in 2001 conditioned such that the mobile business be transitioned and converted to a permanent restaurant within 1 year. The Applicant has submitted numerous applications over the years for permanent restaurant buildings. In 1993 a permit was submitted for a Japanese restaurant. It was never constructed. More recently a Mexican restaurant was proposed. The proposal could not meet the Ordinance parking requirements. The Applicant was told the proposal would have to be modified to eliminate the outdoor seating. The Applicant ultimately withdrew the application. Staff believed originally the site was an old gas station. However they were unsure if the old tanks had been secured. The area within the City of Hayward surrounding A Street has undergone improvement within recent years. Within Unincorporated County there is a new service station, condominiums, and retail. Public testimony was opened.

Ms. Guadalupe Loza told the Board she had been at the site for 12 years. She and her husband were co-owners. When she split with her ex husband, the business broke up. There were also problems with Environmental Health. She had to put the business under her cousin's name. Her ex owns the Acapulco Restaurant in Hayward. Ms. Loza would like to open a permanent restaurant, however currently the

mobile business is her only means of income. Board questions for Ms. Loza were as follows:

- Has Ms. Loza read the staff report
- Has Ms. Loza attempted to lease interior space at the site
- Has Ms. Loza read the new Ordinance
- Is the site in compliance with past Conditions of Approval graffiti, litter etc.
- Are there ongoing issues at the site

Ms. Loza said she had tried to rent interior space but their major issues with Environmental Health. A bogus citation was issued. When she went to court there was no record of the citation. She has not yet read the Mobile Restaurant Ordinance or the staff report. When she opened her restaurant 12 years ago, her establishment was the only one in the area. She is in the process of negotiating a permanent slot with the property owner. Ms. Loza said her ex husband hired people to bring trash to the site and create graffiti. When she complained to the Sheriff she was told that she had to witness the activity. In addition her ex had his manager move to the site next door. He trained a camera on the site to annoy her, and has not paid child support. The Vice Chair said she sympathized with all of Ms. Loza's issues. She asked Ms. Loza if she has looked at alternate sites. Thus far she has not looked for alternate business sites. Member Spalding explained that the intent of the Ordinance was to offer mobile restaurants in areas that do not have access to permanent restaurants.

The property owner, Mr. Fred Fulcher said in general the staff report was correct. However he took issue with some incomplete specifics. The 2001 use permit for a permanent restaurant was issued in the name of Alejandro Gomorra. He gave Mr. Gomorra set asides on his rent. Ms. Loza's ex husband went beyond the permit period. He requested an extension. Mr. Fulcher did not approve an extension. He asked Mr. Gomorra to start construction. He did not. However Mr. Gomorra was granted an extension by the Zoning Administrator, against his wishes. The use permit was issued for a period of 3 years. Mr. Gomorra asked Mr. Fulcher to take Guadalupe off of the lease. Mr. Fulcher refused. Instead he took Mr. Gomorra off of the lease, and supported Guadalupe.

There was a conflict with the next permit due to the proposed retail space. His architect said the issue could be resolved. Mr. Fulcher believed the permit was still active. The property was purchased in the 1980's. Mr. Fulcher submitted photographs of the site conditions when he purchased the property. Since he purchased the site trees have been planted etc. However the property has declined since then. Another property located on Royal Avenue has caused problems for his site. Especially in the past 2 years. Mr. Fulcher believed it has operated as a crack house, and house of prostitution. More recently it has been a boarding house with numerous people living in one home. Blasting music is often heard at 6:00 a.m. Mr. Fulcher talked with his staff planner about the issues at the home at 21260 Royal Avenue. He was told there was no limit to the number of persons that can live in a home. Mr. Fulcher would like to have the issues resolved with the Sheriff's Department prior to investing more money at his site. He has endured a lot. He wants to be a responsible property owner but economic times are hard. He wants to ensure he can make a go of things prior to making a large investment. He lives in Los Angeles. Ms. Loza looks after the property. The ticket issued to Ms. Loza issued by Environmental Health was issued by the Superior Court. Mr. Fulcher thought the process was nefarious. They destroyed all of Ms. Loza's food and the County seized his property. Mr. Fulcher did have a mobile kitchen on the site that he had been using on a movie set. The mobile kitchen was removed. When his attorney wrote to County Counsel, a response was never received. He confronted the Department Head and was told the investigator was on vacation, and the issue would not be pursued. He showed the Board a copy of the ticket that had been issued. There was no signature on the ticket. Ms Loza was finally able to operate again. However he and his tenant lost an enormous amount of time and money.

Further questions for the Applicant were as follows:

- Was there a prior application submitted to improve the site
- What are the Applicant's plans to improve the site
- What type of permanent restaurant will be placed at the site
- Who will be the operator of the permanent restaurant
- Has the Applicant read the language of the new Mobile Food Ordinance
- Has the Applicant talked with the Redevelopment Agency about their plans for the area

Mr. Fulcher submitted a draft proposal of future site improvements. The improvements will take place in stages. Ms Loza will remain at the site. He would like to add 1,000 square feet for use by the auto business. It may be difficult to implement his proposal as a result of the PD (Planned Development) zoning. The County has taken 20 feet of his property, and 4 feet for the public right of way for road widening. The property was reduced by 25% and he can no longer meet the required square footage. As a result of the reduction he cannot meet the Ordinance threshold for a drive through or fast food restaurant. The original lot square footage was 18,375 square feet. Member Spalding acknowledged that could be an issue. Mr. Fulcher thought the Board should be aware of the history of the site. Mr. Fulcher thought the language in the Mobile Restaurant Ordinance was ambiguous. Carmen's BBQ is not fast food. Mexican Food should not be considered fast food. It is served with a salad etc. Regarding the proximity Salvadoran food and pizza are not the same as Mexican cuisine. The Ordinance does not state if the 300 yards are calculated by radius etc. In Los Angeles a similar Food Ordinance is being considered. The present language was thrown out for being too ambiguous. Mr. Fulcher said spoke with the Redevelopment Agency. They informed him of their low interest loans for façade improvement. Mr. Fulcher said he was fortunate in that he did not need funding. He also spoke with Supervisor Lai Bitker's staff. Their position was similar to that of the Redevelopment Agency. He needed specific direction from the County as to when they would proceed with their plans. In addition he did not want to make a major investment at the site until the issues with the property on Royal Avenue are resolved. Mr. Fulcher said the property on Royal Avenue had been operating in various forms without a business license for over 12 years. At one time it was a physic reader business, a boarding house, and a house of prostitution. To make matters worse the property has now been purchased by the former in laws of Ms. Loza. The property remains in disrepair.

Member Spalding then referred to the portion of the Ordinance that she believed focused on the intent. The Ordinance is trying to promote permanent restaurants. She asked Mr. Fulcher when a new site development review plan could be submitted. The Redevelopment Agency has set a target of approximately 1 year. Mr. Fulcher said he had been undergoing the County process for 12 years. During which time he had been deemed a nefarious landlord. He submitted a full set of plans in 1992. The build to suit project was based upon commitments from the City of Hayward, and Alameda County. Mr. Fulcher lost \$70,000 in architectural fees because neither Agency would commit to a definite start or completion date. Reasonably it would take his architect 3 months to prepare updated plans. However he wanted clarification as to what the Counties plans were for the immediate area, as well as a time frame.

Mr. Salvador Anaya submitted a public speaking request but declined to add to testimony presented by previous speakers. Public testimony was closed.

The Board asked staff the following:

- What happened to the original plans the Applicant submitted
- Is this application considered a new or a continuation of a prior application
- Is there a grace period regarding permit expiration for an on going business

- When was the Mobile Restaurant Ordinance first proposed
- When did the Mobile Restaurant Ordinance take effect
- Has there been a increase in application fees since the application process was begun

Counsel said the application was probably not considered new. The 50% participation of the Applicant means they have fulfilled their initial responsibilities. Staff said the last use permit for the site expired in 2004. Typically if there is no response from the Applicant a notice is sent of an incomplete application. The Mobile Restaurant Ordinance has been under consideration since 2004. The original use permit issued in 2001 has expired. The Ordinance was passed by the Board of Supervisors this year. The actual permit sequence is not a real issue. Any monies that have not used from an initial payment can be applied to the current process. Public testimony was re-opened to allow the Applicant to present additional testimony.

Mr. Fulcher said that he was told in 2004 that he had to wait until the new Ordinance was in effect so he would know what the parameters of his development would be. He hired an attorney to steward the process, as he lives in Southern California. Until now he has not closely monitored the process. Member Spalding said that any proposed Ordinance has language that provides for transitional provisions. She remembered in the late 1990's Public Works had many issues, including a staffing shortage. There was also a deep frustration on the part of local businesses and residents at the prospect of the County taking their property. The Vice Chair acknowledged Member Spalding's comments, however at this juncture the Ordinance is now in effect. Public testimony was closed.

Member Spalding thought the Applicant has shown intent of following the Ordinance. The problem was due to the County. The Vice Chair pointed out there were outstanding issue at the site. Member Spalding said the property at 21260 Royal Avenue could be referred to Code Enforcement. Redevelopment should confirm what their intent is. They can also work with the property owner, and Ms. Loza to see if her business will fit new proposals. Perhaps the owner can make some interim improvements to the property. Staff recommended the Applicant submit their plans to provide a basis of discussion.

The Chair thought 6 months was reasonable to develop a plan. The time frame should not linger as there have been complaints about ongoing mobile businesses. The County may also be able to provide additional interpretation of the Ordinance. This will also allow Ms. Loza to develop a back up plan.

Member Spalding also posed the possibility of approving a permit for a 6 month to 1 year period. Benchmarks can be implemented to check progress. Staff recommend a longer permit length, a continuation may be more appropriate.

Based on discussion the Vice Chair motioned to continue Conditional Use Permit C-8271 to January 14, 2009. Mr. Fulcher interjected that he would be out of the country at that time.

The Vice Chair restated her motion. Conditional Use Permit C-8271 will be continued to December 10, 2008. The Applicants shall identify alternate locations for a mobile food business. Draft development plans shall be submitted for the site. Staff shall also provide a permit history. Member Spalding seconded the motion. Motion carried 3/0.

2. **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 (1487<sup>th</sup> 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. (Continued from August 27, 2008). **Staff Planner: Christine Greene.**

The staff recommendation was denial. Initial Board questions were as follows:

- When did the business start
- Is there a Sound Ordinance in effect for the County
- Is the installation of stereo equipment allowed in the AO District
- Is the business considered a "drive through"

Staff said the CO (Administrative Office) District considers the business a "drive in" business. The installation activities are considered secondary to the sales aspect of the business. The facility is considered a retail facility. There is a Noise Ordinance for Unincorporated County. The denial recommendation is based on the intensity of the business and the noise levels impact the surrounding neighborhood. There is a disabled care facility within proximity of the site. Public testimony was opened.

The Applicant, Mr. Robert Navarro was present. Mr. Navarro said when he considered opening his business he verified zoning with the Planning Department. He did not obtain a business license. After being open a few months he received a letter that his business was illegal. While conducting business he keeps noise at a minimum. He believes his business gets complaints as a result of cars driving through the neighborhood with loud stereos. Questions for the Applicant were as follows:

- Has Mr. Navarro read the letter on behalf of the tenants at Olive Tree Plaza
- Is there a limit to the level of window tinting that is performed
- Is there a limit to the number of windows that can be tinted
- Why is the business operating without a permit
- What is the volume of business at the site
- Has Mr. Navarro read the staff report

Mr. Navarro told the Board he had not been approached by anyone from the senior facility. He has also talked with the property manager from Eden Housing and has not received any feedback. The Chair then read a letter submitted in July by Susan Stone. The Vice Chair said the business had to be conducted in a conscientious way. The residents at the surrounding facility are disabled. When one of the residents approached the store manager about the noise, the manager told the resident there was nothing he could do. He could not ask customers to quiet down because they might be armed. Mr. Fulcher said he was unaware of the noise complaints. There had been a small issue with the property owner in the past regarding a fence. The fence has now been demolished. The store manager, Mr. Navarro continued. He owned a similar business in Oakland where he did install big box stereos. At the Hayward location only small systems are installed. He obtained a business license from Alameda County. He was not aware that further permits were required until he received a letter from Code Enforcement.

The letter said the window tinting required a use permit, and the banner signage was not allowed. The tinting they install is a film. The film comes ready from the manufacturer. He believes there are limitations on tinting levels. However the manufacturer should account for that. Mr. Navarro was aware of a rule that does not allow the driver and passenger windows to be blacked out. Member Spalding referred to the staff report regarding issues law enforcement may have fighting crime when windows obstruct persons from view. Mr. Navarro said he was unsure how window tinting could affect the overall neighborhood. He is a family man. If necessary he could forego stereo sales. Most of his business is

window tinting. He has removed the banner signage.

Staff read the Ordinance for auto sales. Counsel said she believed there were some thresholds. Conditions of the use permit could be modified. However she would need to verify the State Vehicle laws regarding tinting.

The property owner, Fred Fulcher said he confirmed at the planning counter permit that the use was allowed at the site. The site was a former gas station. He is taxed as a gas station. Although he was told at the planning desk that the site was zoned PD (Planned District). He also talked with Code Enforcement and was told there were no complaints. Mr. Fulcher said he has a standing order with the Sheriff's Department to remove any persons, illegal businesses like clothing or rug sellers from the site. He spoke with the Sheriff today to confirm the order is still in effect. He has seen some unruly kids at the site but nothing out of control. The stereo sales business is included in his overall development plan. He considers the business as a drive up. Public testimony was closed.

The Chair pointed out that the property owner was not on site. A lot of various activities take place. She was also under the impression there were limitations to levels of window tinting gradation.

Member Spalding did not believe the finding could be made to continue the window tinting. Possible findings could be made to continue the retail sales. However noise is still an issue. Complaints have been received. It would be helpful to know the legal limitations for window tinting as it relates to law enforcement safety. The staff report does not speak to window tinting. The Applicant offered to bring in documentation of State Law regarding window tinting.

The Chair asked Counsel if the BZA was obligated to make a finding connecting safety in regard to window tinting. Counsel said at this juncture there was not sufficient information present to make a definitive determination, to make that finding. That may not be a requirement in regard to this application

Member Spalding asked if the application could be bifurcated. Counsel discouraged bifurcation as it may create more difficulty at this point. It could also cause difficulty or trigger an appeal.

The Chair said if the Applicant was amenable to a continuance, perhaps a sound test would be in order. Member Spalding was not comfortable allowing the current level of noise as that is the basis of the staff recommendation of denial. Public testimony was re-opened.

Mr. Navarro told the Board he would cease the stereo installation aspect of the business. The window tinting is the greater part of the business. The Vice Chair asked if the stereo equipment is blasted while being installed. Mr. Navarro said the installer has worked with him for a number of years. The installer is older than he is, and is sensible. Mr. Navarro was willing to post signs instructing staff and customers to keep radios, and noise at a minimum.

He reminded the Board that the type of equipment that emits loud noise is installed in vehicle trunks. That is not the type of equipment they install. He personally keeps his stereo down. Mr. Navarro was not opposed to a continuance. He can then provide documentation regarding window tinting.

Member Spalding motioned to continue Conditional Use Permit to December 10, 2008. Staff will provide regulations and/or Ordinances regarding allowed decibel levels for PD Districts. The manager shall conduct business at reasonable noise levels or Code Enforcement shall respond to any complaints. The possible business on Royal Avenue shall be investigated to determine if action should be taken. The Vice Chair seconded the motion. Motion carried 3/0.

**APPROVAL OF MINUTES:** The Minutes of September 24, 2008 were continued to October 22, 2008.

**STAFF COMMENTS & CORRESPONDENCE:** The Board of Supervisors will hear the appeal of Variance, V-12117 - Silva, and C-8555 – Laguna on October 14, 2008. Staff is in support of the BZA decision of denial in both cases.

**BOARD'S ANNOUNCEMENTS, COMMENTS AND REPORTS:**

Member Spalding announced that she will depart early from the October 22 2008 Hearing.

Member Spalding queried other Members to confirm attendance for November meetings. She understands that Member Peixoto will be stepping down as of November 1, 2008, to care of his ailing wife. Members should coordinate to ensure there is a quorum for meetings.

The Vice Chair will not be at the November 5, 2008 Meeting.

The Chair asked if any of the on going issues mentioned in earlier testimony could be referred to County Agencies. Staff said in the past, the property owner was reluctant to issue a complaint about the neighboring property. The Chair asked that the site be added to the enhanced Code Enforcement Task Force List.

Member Spalding said perhaps a neighborhood history could be added to staff reports when there is a history of crime; or on going issues in an area. County Counsel said the Sheriff's Department can provide a general history of an area. However Counsel cautioned that if a history of a neighborhood is to be used, as a basis for findings. A nexus would have to be made to support the use of such history.

**ADJOURNMENT:** There being no further business, the hearing adjourned at 9:00 p.m.

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**ALBERT LOPEZ - SECRETARY**  
**WEST COUNTY BOARD OF ZONING ADJUSTMENTS**