

**MINUTES OF MEETING  
WEST COUNTY BOARD OF ZONING ADJUSTMENTS  
OCTOBER 22, 2008  
(APPROVED JANUARY 28, 2009)**

**REGULAR MEETING: 1:30 p.m.**

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

**MEMBERS EXCUSED:** Frank Peixoto.

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

There were approximately 15 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. J C MAGGINI, 16560 Ehle St., San Leandro, CA 94578**

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

1. Unlawful outdoor storage of debris and miscellaneous items in front yard
2. Overgrown vegetation & weeds
3. An inoperative vehicle.

Member Spalding motioned to uphold the staff recommendation. Declare the property a public nuisance, require abatement to be complete within 15 days. Member Adesanya seconded the motion. Motion carried 4/0.

**2. JESUS MENDOZA, 2561 Miramar Ave., Castro Valley, CA 94546**

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

1. Unlawful outdoor storage of debris and miscellaneous items in side and rear yards.

Member Spalding motioned to uphold the staff recommendation. Declare the property a public nuisance, require abatement to be complete within 15 days. Member Adesanya seconded the motion. Motion carried 4/0.

**3. WACHOVIA MORTGAGE, FSB, 15854 Paseo Largavista, San Lorenzo, CA 94580**

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

1. Overgrown vegetation & weeds in front, side and rear yards.

The Vice Chair motioned to uphold the staff recommendation. Declare the property a public nuisance, require abatement to be complete within 10 days. Member Spalding seconded the motion. Motion carried 4/0.

4. **ALEJANDRA MEDINA, 21684 Meekland Ave., Hayward, CA 94541**  
In violation of Alameda County Ordinance Section 17.12.030.  
Operating a marble and tile business on a residential property

Member Spalding motioned to continue the matter to the November 5, hearing. Staff will clarify what constitutes abatement of the business. Member Adesanya seconded the motion. Motion carried 4/0.

**CONSENT 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, July 9, August 27 and October 8, 2008; to be continued to November 12, 2008). **Staff Planner: Pat Anekayuwat.**
2. **DARYL DWAYNE MANGRUM – VARIANCE, V-12123** – Application to determine building site status and the reduce front yard setback from 30 feet to 20 feet with the construction of a new single family dwelling in an “A” (Agricultural) District, located at the 4.7 mile marker on Palomares Road, south of Palo Verde Road, unincorporated Castro Valley area of Alameda County, bearing Assessor’s Parcel Number: 085A-4100-009-28. (Continued to November 12, 2008) **Staff Planner: Donna Vingo.**

Member Spalding motioned to accept the Consent Calendar as proposed. The Vice Chair seconded the motion. Member Adesanya abstained, and did not participate. Motion carried 3/0.

**REGULAR 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 and October 8, 2008). **Staff Planner: Sonia Urzua.**

Staff reviewed the application and recommended approval. The Castro Valley Municipal Advisory Council recommended approval, with two added Conditions. The fence adjoining the property should be repaired. The Applicant shall also be responsible for the costs of relocating the mailboxes, at the adjacent housing development. Initial Board questions were as follows:

- Where will the proposed tower be placed at the site
- Will the existing tower be replaced
- Where is the temporary tower located

Staff explained there is an existing tower on top of the church, in the shape of a cross. The application before the Board is to replace the temporary mobile tower that is located in the church parking lot. The temporary tower is also in the shape of a cross. The new tower will physically replace the existing cross structure. The antennas will be housed inside of the replacement cross structure. The temporary site in the parking lot will be removed.

The Applicant Mr. Greg Guerrazzi was present, representing T Mobile. He further explained the antennas mounted to the peak of the church roof, belong to Metro PCS. The temporary equipment in the parking lot that belongs to T Mobile will be removed. The prior use permit was approved. However there were challenges with the design. It did not appear the stealth pole could be mounted on the existing concrete base. The new design will replace the concrete base, and encase antennas inside of the cross. A building permit has already been issued for the updated design. The existing cross will be removed. The cross will be 67 feet high compared to the existing structure that is 80 feet high. The new proposal is 13 feet lower, and reduced in mass. During the permit process, another carrier obtained approval to place a facility at the site. Metro PCS has antennas on the roof of the church, set inside box like structures. The wooden roof peak is an independent mounting. There is no infrastructure to support co-location of additional antennas. Member Spalding asked if the T Mobile cross size could be reduced. Mr. Guerrazzi said the height has been reduced from the original design. The antennas will be placed at 63 feet. There is a possibility the 30 inch diameter can be reduced. However the facility provides coverage for the 580 Freeway. The cross structure design will support one additional set of antennas. Another carrier may be able to co-location onto the T Mobile facility.

Mr. Paul Albritton, Counsel for T Mobile was present. The fiberglass spar inside of the cross as proposed could support another set of antennas. However if the width were reduced, additional antennas would have to stack upward. Mr. Albritton confirmed the present application was being heard as a result of a noticing error in 2006. The CVMAC recommended approval unanimously. Concerns arose from the adjacent Home Owners Association last year. T Mobile met with the members of the HOA, and confirmed the facility is located within church property. An updated radio frequency report has been conducted by Hammett and Edison. Members of the HOA and community members were queried about the aesthetics of the pole. The consensus was the new streamlined design was preferred. Mr. Albritton felt the design was in compliance with the Telecom Standard guidelines. The proposed site will replace an existing installation. Neighboring views would not be obstructed. The antennas will be fully camouflaged. It is not obvious the cross, is a telecom facility. The design is the best alternative to cover a considerable service gap. Mr. Albritton submitted graphics, and a letter indicating coverage gaps. The current site receives 43 calls to 911 each day. The site is flat. The installation is at the end of the plateau. The current placement is to northwest side. The installation provides coverage to the south, north, and west. If the site were located to the east, existing hills would block coverage. If located to the north, additional antenna height would be required. If located to the south. The facility would have to clear the church sanctuary. Board questions for Mr. Albritton were as follows:

- What is the distance to the closest residential property
- Does the current pole overshadow nearby homes
- Is T Mobile required to co-locate the proposed facility

Mr. Albritton said the antennas are approximately 60 feet in height. The pole is 30 inches in diameter. The closest home is 30 feet from the installation. In total the cross arms are 15 feet across. Originally more slender cross arms were considered. However when an installation is slender, the scale appears taller. The current design proportion looks more like a cross. The church has also approved the cross design. The HOA claims T Mobile is required to co-locate. Alameda County Telecom Standards, Policy K-4 do not require co-location when a facility is camouflaged. In addition it would require redesign of the church sanctuary, to relocate with the Metro PCS site on the western side of the church. A

minimum distance of 5 feet between antennas is required. The frontage of the church is glass. The T Mobile structural engineer can answer further questions. Mr. Allbritton believed the proposed design was superior. Based on a new ambient noise study, the sound emitted from the facility is equivalent to a fan. This sound cannot be detected beyond the property perimeter. The Federal Telecommunications Act of 1996 does not allow local jurisdictions to regulate wireless facilities based on environmental affects of radio frequency emissions; discriminate between carriers; or perpetuate significant coverage gaps without substantial evidence. That evidence must also be placed in writing. Regarding property values, case law has determined that concern over the decline in property value is tantamount, to, concern over radio frequency emissions. (*City of Carlsbad v.s. ATT*). Mr. Allbritton did not believe there was substantial evidence present to recommend denial of the application. He then referred to a letter received October 21, from Counsel representing the HOA. Regarding the argument that telecommunications facilities are not allowed in residential zones. Mr. Allbritton disagreed. He pointed out that staff disagreed as well. As described in the Zoning Ordinance 17.08.040 telecom facilities are allowed within community facilities. Definition #6 includes utility uses. T Mobile is a public utility, Public Utilities Number #3056C. Mr. Allbritton then referred to Section 216 of the Public Utilities Code, which defines a telecom corporation as a public utility. Regarding the reference to HOA's letter that telecom facilities were not allowed within 300 feet of a residence. Telecom Policy H-2 refers to ground mounted facilities no taller than 15 feet, including the height of antennas. Mr. Allbritton believed the proposed installation would fall under Telecom Policy I-1. There are no restrictions for freestanding telecommunication towers that exceed 15 feet. Based on the Telecom Guideline Glossary of Terms he believed the proposed installation is a tower facility. Mr. Allbritton explained what he believed to be the rationale for the Telecom Guidelines. At a 15 foot level, emission would be directed into most buildings. The proposed tower the antenna would be 60 feet in the air. The signals are directional, and fan out like a light house. The antennas have a directional signal. Waves emitted are at their strongest at approximately 30 feet, then dissipates. Mr. Allbritton surmised this precipitated the distance recommendation, for ground mounted antennas. Ground mounted antennas are typically used near water towers, or hillside installations that are not visible. He believes cell phones save lives. The proposed installation fills coverage gaps. Any residentially zoned telecom installation is challenging. T Mobile has made an effort to develop a design with staff to completely camouflage, and improve the aesthetics. This is an improvement compared to the temporary telecom facility. Board Members asked for additional information regarding the following:

- Where is the installation in relation to the church
- What is the height of the concrete base on the temporary telecom facility
- Why is it necessary to repair the adjoining fence
- Why is it necessary to re-locate the mail boxes on the adjoining HOA property
- Has staff or Mr. Albritton responded to the letter written by the HOA Attorney

Mr. Allbritton used photo simulations to explain. The new proposal will be placed in the exact same location as the temporary facility. It is not on top of the church. The temporary facility is in the shape of a cross that is 80 feet tall. The replacement will be approximately 60 feet tall, with the antennas housed inside of the cross. Mr. Allbritton referred again to Telecom Policy Guideline, K- 4. In this installation, the tower antennas will be camouflaged. Towers that can be camouflaged are exempt from co-location requirement.

However with the specified design, another company can place a set of antennas within the cross. T Mobile would agree to another carrier co-locating onto the facility.

Mr. Guerrazzi told the Board that a portion of the fence adjoining the property would have to be removed to complete the project. T Mobile met with the HOA and agreed to replace the fence. This will provide a more consistent look along the perimeter. It is not necessary to move the mail boxes to complete the project. The HOA planned to move the mail boxes. T Mobile offered to contribute to the project, to be

helpful.

Counsel for Alameda County discussed comments made in regard to the application. A letter from the HOA's Attorney was received yesterday in which they presented their view. In reference to the argument presented by Counsel for the Applicant contending that T Mobile is a community facility, because it is a public utility. Considered under Section 17 of the Zoning Ordinance, this is a conditional permitted use. County Counsel said staff has considered the application from a compliance perspective based on the 1996 Telecommunications Act. The Sighting Guidelines for the Act were adopted in 1997 by the Board of Supervisors. The Telecommunications Act of 1996 prohibits the complete barring of telecommunication facilities from entry into communities. Jurisdictions can however place reasonable restrictions, and go through other processes. Guidelines adopted by the Board of Supervisors do represent restriction, to the extent possible through policy, by outlining areas and zones where facilities can be placed. Federal law requires that such areas be allowed. The Alameda County Telecom Guidelines can be used as a tool to aid in the BZA's decision regarding the application.

Attorney, David Trotter was present representing the Miramar Homes Association. Mr. Trotter believed that T Mobile was acting contrary to the Alameda County Zoning Ordinance. Mr. Trotter's interpretation was that the proposed use was not allowed. The remedy to provide for telecom facilities in residential areas would be the adoption of a new County Ordinance. Thus far staff has not stated they are in agreement with the definition. A community facility as a public utility is not intended for private commercial cell site use. He did not believe that was the intent of the Zoning Ordinance for an R-1 (Single Family Residence) District. Mr. Trotter pointed out the County provides standard conditions of approval for co-location. The other carrier at the site Metro PCS and the church were required to allow other carriers co-location wherever possible. The County prefers to limit building and antenna infrastructure on any given property for telecom facilities. Co-location is entirely possible at this site. In reference to "Exhibit B", T Mobile prefers to install a 67 foot fiberglass cross. This will loom over the neighborhood. The cross can also fall. Technically all that is needed to prevent antenna feed back is 5 feet of vertical separation. A short fiber glass cross can be put on top of the church building. This would provide coverage, and capacity. T Mobile states the proposed installation is at the northwest side of the property. The installation location is actually at the western end of the church site. The location sits out on a bluff, 30 to 35 feet away. Technically it is feasible to co-locate with Metro PCS. The permit also required the height reduction of the permanent antenna. As a reference, Mr. Trotter referred to the equipment cabinets shown in a photo simulation. T Mobile has not provided credible information that the installation cannot be, co-located. It is not credible that T Mobile cannot achieve a 5 foot antenna separation, on top of the church. Placing the cross on top of the church will move the facility another 30 further from homes on the adjoining site. It will not be unsightly to have a slightly higher cross on top of the church. There has not been a concerted effort to show the installation cannot be attempted. Construction of the new Bay Bridge is proof that amazing engineering technology exists. Regarding co-location, a slight shift in location cannot not have an impact on coverage there is no evidence that topographical interference is present. T Mobile contends they would have to traverse an existing church building, in order to move the proposed antenna. Co-location with the existing cross would resolve that issue, due to the placement on top of the church. Mr. Trotter said the Board had the discretion to require T Mobile co-locate its facility, away from the nearby residents. Co- location does not discriminate against T Mobile. In addition there is no evidence that Federal law will be violated if co-location occurs. Mr. Trotter understands there are always competing concerns that must be balanced. Although the antennas are inside of a cross, the homeowners know what is inside. The proposed installation could fall in an earthquake, if it failed. The BZA can exercise its discretion utilizing the existing Ordinance to minimize the impact to nearby residents, by not placing them in direct proximity. Mr. Trotter did not believe that T Mobile was exempt from co-location due to the camouflaged antenna design. Telecom Guideline K-4 cannot be interpreted in isolation of other telecom policies. Telecom policy requires 300 feet from residences. The Miramar Village residents are requesting a 60 foot distance. The proposal is a 67 foot

cross looming over residents. If the installation is allowed, further co-location will take place. Mr. Trotter asked the Board to deny the conditional use permit. However if the Board was not inclined to deny the application, he requested the proposal be installed next to the existing Metro PCS installation.

*The Chair announced that it would be necessary for Member Spalding to depart from the Hearing. Member Spalding asked that in her absence the Board further discuss stated impediments to co-location with Metro PCS. The time was 3:08 p.m. The three remaining Board Members formed a quorum. Testimony continued.*

Additional Board questions for Mr. Trotter were as follows:

- Have HOA Members agreed to the re-location of mail boxes
- When was the existing cross on the church roof installed
- Can the cross on top of the church support the proposed installation
- Are there antennas in the base of the temporary telecom facility
- What is the opinion of the Miramar Village residents regarding the current T Mobile installation
- What is the opinion of the Miramar Village residents regarding noise from the facility

Mr. Trotter said the CVMAC recommended that T Mobile offer to move the mail boxes, as a concession. This will not satisfy the co-location concerns of the Miramar Village residents. There is an obvious co-location alternative that is evident. The Miramar Village residents have an overall concern. The T Mobile facility is located on the north bluff. The Hayward Fault is approximately ¼ mile away. This potentially puts the facility in the epicenter of a quake. It would be preferable if the facility were not replaced, and the temporary facility taken down. Seismic concern is something the BZA can consider.

County staff said the cross structure on top of the church was installed in the 1950's. The Vice Chair said potentially a new facility may be more seismically sound, as opposed to one installed previously. However in an earthquake there are no guarantees that any structure could withstand failure. Mr. Trotter said the ambient studies do not capture all of the sounds, a human ear would detect. Nor do they take into account the impact that sound may have on human ears.

Mr. David Armstrong, the President of the Miramar Village HOA said his unit is 30 feet from the proposed cross tower. Another unit is within the same proximity. The concern is that in an earthquake the 67 foot tower would come down on their homes, as they are only 30 feet away. Board questions for Mr. Armstrong were as follows:

- Is there a safety concern regarding the existing cross structure
- What type of communications equipment is currently installed on the roof
- Are antennas located in the concrete base of the temporary cell facility
- What level of noise will the proposed installation emit
- Can freeway noise be heard at the condominium complex

Mr. Armstrong told the Board he was also concerned with the existing structure. However the base of the existing cross is made of concrete. The concrete base may change the trajectory of the tower. The top of the cross is also small. There has been discussion in the media lately about an eminent earthquake. Many people are concerned about the proximity of the Hayward Fault to the installation. Mr. Armstrong has obtained 20 signatures of a total of 22 residents who are opposed to the project. The residents do not understand why T Mobile cannot co-locate with Metro PCS. Originally Metro PCS was going to co-locate with T Mobile. The scenario should still be possible. Mr. Armstrong said one of the neighbors can hear buzzing emitted from the temporary structure at night. He also hears noise. However due to the downstairs location of his home, the buzzing is probably less pronounced. Freeway noise can also be

heard. Generally the neighborhood is quite. When noise occurs, it is apparent.

Another resident Mr. Gerald Alves of the Miramar Condominiums told the Board that his home was located beneath the church. He was in agreement with Mr. Armstrong's points. The T Mobile installation should be placed where the Metro PCS equipment is located. The existing cross has a concrete base. No damage was incurred during the last earthquake. The proposed cross is a larger mass that will be 60 feet above the ground, on a 30 foot pole. The Hayward Fault is 2 blocks from the site. There are small children living in the complex. The mailbox area is approximately 15 to 20 feet from the equipment. The noise from the current facility can be heard while standing at the mailbox. Noise from the Metro PCS equipment can be heard day and night, through the fence. Mr. Alfred was concerned that future co-location with T Mobile will double the amount of equipment. As a home owner he did not want an antenna site above his home. If he were purchasing another residence, he would be concerned about living in a neighborhood with such equipment. The Vice Chair asked Mr. Alfred to clarify the noise level. Mr. Alfred explained the equipment that powers the Metro PCS antennas is located below the church, on the west side of the building. This is the same side of the building on which, the T Mobile equipment is proposed. If T Mobile equipment is placed next to the existing Metro PCS equipment, the noise level will be amplified.

Mr. Paul Allbritton returned to respond to prior testimony. T Mobile has been in the application process for 2 years. There are 43 calls to 911 routed through the site each day. He pointed out that cell facilities were allowed in residential areas. T Mobile has worked with staff to find the appropriate placement. The church site is an appropriate location. Within Alameda County other telecom facilities are located in residentially zoned areas. These facilities have been in place for 20 years. The T Mobile construction engineer is present to answer specific questions about the difficulty of attaching the proposed cross to the northern side of the church. With an existing building, wind loads must be considered. The hill side drops off. In addition to the cross being able to withstand earthquake standards. A facility must be designed to withstand wind. The proposed wireless tower is a secondary back up component, to the emergency infrastructure. T Mobile is part of the emergency communications backbone which makes triangulation possible. T Mobile is not required to conduct an acoustic report. However one has been provided. The report shows that the night sound levels are 45 decibels. Day time levels are 54 decibels. The present generator in the church parking lot operating the temporary facility will be replaced with a new, quieter model. The sound level emitted will be reduced by two thirds. Mr. Allbritton compared telecommunications use to the necessity of street lights. Most people don't want light poles, but prefer sidewalks be lit. Mr. Allbritton said he met with the community in an attempt to develop a solution that was an aesthetic improvement. T Mobile has also worked with staff to comply with applicable ordinances. Although 20 residents adjacent to the facility object to the installation, the larger overall community will benefit. The Chair said she believed 911 emergency calls are routed to the Vallejo Sheriff's Department, which sometimes causes delays. Mr. Allbritton clarified that cellular companies have to maintain their own separate 911 emergency infrastructure. Counties also have the ability to direct their calls to a County dispatch, if they prefer.

The construction manager for T Mobile, Mira Milosevic offered to answer questions. Member Adesanya asked him to explain why co-location, is not possible. Mr. Milosevic explained structural engineers, and an architect visited the site to consider options. The church sanctuary has a glass frontage. The Metro PCS antenna is at the tip of that structure. The structure is counter levered on concrete then goes into the foundation, 10 feet back. The bridging material is made of wood, not steel. For co-location to be possible the structure would have to further extend, 16 feet. This extension would cause further wind shear, creating more load. The TIA wind load requirements are stringent. The wooden sanctuary structure would not meet current standards. It is unlikely the required wind load for the existing wooden frame structure can be achieved, since the sanctuary is already counter levered. The sanctuary would have to be rebuilt. Location is also factored into the calculation. Aesthetics is a further consideration when placing

a facility at a church. A viable sanctuary may meet engineering standards, however not be appealing. The foundation of the proposed tower will sit on a cell block foundation. Of 4 concrete squares, 1 is anchor bolted. The tower can withstand 80 mile per hour winds, half inch ice, and earthquakes, without falling. As the tower rises it is comprised of fiber glass, and light weight steel. This prevents the structure from being top heavy. If antennas attached to the cross members of the Metro PCS were extended to accommodate T Mobile antennas. Increased height and size would be necessary. Therefore load and structure stress increases. If the sanctuary were new construction, perhaps co-location would be possible. Exact calculations performed by a wind load engineer would be necessary to provide further information. Board questions for Mr. Milosevic were as follows:

- Is it necessary to provide a 5 foot separation between telecom antennas
- Why is it necessary for the T Mobile antenna to have a height of 60 feet
- Will the proposed installation have the capacity to carry increased data transmissions
- What is the proximity of the closest telecom facility
- What is the range of the next facility

Mr. Milosevic said distance between antennas is necessary. Radio waves require distance to modulate. This can vary based on frequency. If emitting antennas are too close. Sound waves cannot modulate. The facility carries an allotted level of transmission traffic. Transmission capacity will be open for voice and data transmission. This band width can be occupied by data and/or cell signals until it reaches full capacity. The original proposed height was 80 feet. This was lowered due to concerns that were voiced. The 60 foot height was determined by engineers, to allow optimal propagation of signals over the 580 Freeway.

Engineer Bill Hammett told the Board he operated a 14 person firm that conducts radio frequency testing. Although he does not work specifically for T Mobile, he offered comments about the Radio Frequency Report. He further clarified that he did not design the T Mobile installation, but performed the evaluation. A 5 foot equipment distance is required to eliminate interference between the telecom carriers. All communication channels are now, digital data signals. In the 1980's there were analog voice channels. In general carriers have coverage areas they are trying to achieve. This is usually designed to work in conjunction with other equipment in the surrounding area. T Mobile is adding the facility to accommodate additional required capacity. Each carrier at the site has a specific coverage gap area which they need to fill. T Mobile staff can explain where there other facilities are located.

Greg Guerrazzi returned to add further testimony. Referring to coverage maps the closest T Mobile facility is located to the northwest, at the Bayfair Mall. The 580 / 238 Freeways are also to the northeast. Coverage depends on required range, construction, range of equipment, and the density of the urban area. Traffic also has an effect. Typical spacing in dense urban zones is, 1 to 2 miles. The Metro PCS facility has a shorter antenna pole. It may fit the Metro PCS requirements, but not T Mobile requirements. Each company may not be attempting to achieve the same coverage area. Further Board questions were as follows:

- What is the size of the proposed equipment cabinets, compared to the Bayfair Mall site
- Will the equipment be similar
- Will the equipment emit a similar level of noise
- Can equipment be modified to reduce the level of noise emitted
- What is the maximum noise level allowed in the Zoning Ordinance

Mr. Hammett said the Metro PCS radio equipment cabinets at the church property are air conditioned units, with a generator. The generator is the cause of noise. He believed the units at Bayfair were similar.

The proposed T Mobile cabinets at the church site are individual units. They will not be as large, nor will they be air conditioned. Erickson Model 2106 units are designed for outdoor installations. They contain a fan, similar to that in a computer. Mr. Hammett said he did measure the total sound emitted from the church site which included the Metro PCS equipment cabinets, and freeway noise. Measurements were conducted from 2 representative locations. The sound emitted was 54 decibels at one location and 55 decibels at another. The Alameda County limit for noise emission is 50 decibels. The sound is already above the County limit due to the nearby freeway. Inside of a sound studio the equipment would be 30 decibels. A human whisper is 40 decibels. The proposed equipment is designed to be quiet. The three T Mobile cabinets will be 15 decibels lower than the existing equipment. Mr. Hammett also discussed decibel level information when he attended the Miramar HOA Meeting.

Mr. David Trotter the Attorney for the Miramar HOA returned to speak. This is the first time reasons have been given as to why there may be impediments to co-location with the Metro PCS antenna. Off the cuff testimony has been given as to why co-location is not possible. Perhaps the weight of the fiberglass may not be as much of an issue. However documentation has yet to be subjected to a peer review. Mr. Trotter did not believe the BZA had sufficient time to explore the information, as thoroughly as they might. In addition an explanation as to why the tower antenna had to be placed adjacent to the property line or documentation to support the 67 foot height requirement had yet to be provided. A lower tower would have less of an impact on the Miramar Village residents. Mr. Trotter confirmed that he did receive the letter from Mr. Allbritton which included Exhibits, A1 & A2. Mr. Trotter did not believe the material addressed, or explained how the configuration provides additional coverage. The stated coverage gap may be filled by another nearby T Mobile facility. The interest of the neighborhood may be better balanced by utilizing other T Mobile facilities. Public testimony was closed.

Member Adesanya thought the Board should discuss the proposed Conditions. She was in agreement that sufficient testimony was not offered as to the possibility of lowering antenna height, and retention effectiveness. Although it may be difficult to enforce, possibly conditions can be modified to install the antenna at a height that is as low as feasible; or not to exceed a certain height. Equipment alteration may have an impact on possible detrimental affects. Counsel said actual Condition language may be difficult without sufficient data present to determine final configuration. Perhaps the Applicant can provide additional testimony. Public testimony was re-opened to obtain more information.

The Applicant Mr. Greg Guerrazzi said the cross / antenna originally approved, was 80 feet high. The revised plan has lowered the tower to 65 feet. If the height is further reduced, surrounding terrain will reduce signal coverage. Although it may be possible to further reduce the height by a few feet. The decreased height may require another site to compensate for the coverage gaps. Member Adesanya asked if the design and shape of the cross could be altered to provide more structural stability. Mr. Guerrazzi explained the building permit had already been issued for the 67 foot pole. The project has been deemed safe by the County, and meets structural codes. Seismic review has also been completed.

The Chair pointed out that other applications had been granted. As a result of the burdensome, inordinate length of time a co-locatable telecom took to obtain permits. She recalled that Metro PCS said co-location was possible at their location. Staff did not recall that specific point. However the allowance of co-location is a standard requirement for telecom use permits. Public testimony was re-opened.

Mr. Milosevic returned to testify. Metro PCS may allow co-location. However it may not be feasible when all of the requirements are considered. The proposed T Mobile site is structurally sound, and will accommodate another carrier. The Chair asked if alternate positions on the roof had been considered.

Mr. Hammett interjected and said the antenna placement is at the furthest outward point. If moved back, signals would be impeded by the roof because of the drop off on the hill side. The Metro PCS and T

Mobile antennas cannot be placed at the same height. Signals would cancel one another out. He referred to a graphic to make his point.

Mr. David Trotter Attorney for the Miramar HOA also returned to speak. He pointed out that T Mobile has not said there is a difference in coverage if the installation were placed on the west vs. the northwest end of the church. The coverage must be achievable at either location. If there are challenges with a roof mounted installation, the facility could be set in a concrete base in front of the window wall, on the west side of the church. The 67 foot tower would be away from the Miramar Village residents. This would please the neighbors. There is no data proving that T Mobile cannot achieve coverage on the west side of the church.

The Applicant, Greg Guerrazzi pointed out the area in front of the church is on a slope. There is no flat area in which to place a facility. If the T Mobile installation were placed on the roof with Metro PCS, coverage would be lost. The Metro PCS antennas are 40 feet high. If the T Mobile antennas were reduced by 20 feet, a dramatic coverage loss would result. Public testimony was closed.

The Chair thought the Board should further explore all possible options for co-location. She also reviewed draft language for modification of Tentative Findings posed by Member Spalding, prior to her departure from the hearing. Regarding Tentative Finding #3 health and safety, this should be clarified and reiterated. The portion of the sentence that states: As regulated under the FCC and the PUC, should be replaced with *to the permissible extent of local and State review*. County Counsel said Member Spalding briefly spoke with her prior to leaving the hearing. Member Spalding's concern was that as phrased, it may appear the BZA was aware that the FCC and PUC have weighed in on the particular application. Counsel recommended adding Member Spalding's proposed language, as opposed to striking the reference to State and federal agencies. Preferable language would read: No. As regulated under the FCC and the PUC, *and to the permissible extent that local, state and federal agencies* have addressed the issue to the satisfaction of the community at large, the use should have not have any detrimental effects upon the general public with regard to health and safety. Member Spalding also asked Board Members to discuss possible modification to language in Tentative Finding #4. After discussion Board Members made no changes to Tentative Finding #4.

Member Adesanya thought it would have been helpful to have an opinion other than that of T Mobile. However in the absence of a second opinion, although the situation was not ideal, there is no indication the Applicant cannot make the application findings. Member Adesanya further clarified, Tentative Finding #4. She acknowledged for the record, Alameda County Development Standards for Siting of Telecommunications Facilities are based upon, and the direct implementation of the Federal Communications Act. This further explains why County Counsel's statement, as explained in Tentative Finding #4, may allow a telecom facility in an R-1 District.

The Vice Chair motioned to uphold the staff recommendation of approval, based on staff findings. Tentative Findings and Conditions of Approval will be adopted. Member Adesanya seconded the motion. The Chair asked if the motion included Counsel's recommended language for Tentative Finding #3. Staff asked if the Castro Valley Municipal Advisory Council recommendations regarding fencing and mailboxes would be adopted as well. The Vice Chair confirmed that Counsel's recommended language would be added to Tentative Finding #3. The Castro Valley Municipal Advisory Council's recommendations shall also become Conditions of Approval: T Mobile shall repair and/or replace fencing to the adjacent property to provide a consistent appearance. The Applicant shall also pay for the re-location of the mail boxes at Miramar Village. Staff clarified the CVMAC recommended T Mobile be required to spend up to \$2,500 toward re-location.

The Vice Chair modified her motion to state the Applicant shall contribute \$2,500 toward the cost of re-

location. The Chair asked if a time limit would be imposed for the donation to occur, also who would be responsible for coordinating the contribution.

Public testimony was re-opened. Mr. Trotter returned to clarify. The Castro Valley Municipal Advisory Committee recommended T Mobile pay the entire cost of re-locating the mail boxes. During discussions between the Applicant and the HOA issues arose regarding access to the property and possible damage, or resulting injury. Additional insurance may be necessary. T Mobile should have an additional obligation to the Home Owners Association. The Chair responded, the Board would only address the motion that was currently on the floor. Public testimony was closed.

Member Adesanya did not want to cap the contribution limit T Mobile will make toward mailbox relocation. Staff should review the comments made by the CVMAC, and follow the recommendation. Condition language should accommodate that. Member Adesanya accepted all other modifications.

The Vice Chair commented that although not part of C-8478. Metro PCS shall attempt to reduce the noise of their on site equipment. It appears optional equipment is available. A reduction in noise would benefit the community.

The Vice Chair re-stated her motion. Approve Conditional Use Permit, C-8478 based on staff findings. Tentative Findings and Conditions of Approval will be adopted. Language for Condition #3 shall be modified, as stated by County Counsel. Further Conditions shall be added: The Applicant shall repair and/or replacement of fencing to the adjacent property. The Applicant shall follow the guidelines as set by the CVMAC regarding the relocation of the mailboxes at the Miramar Village. Member Adesanya seconded the motion. Motion carried 3/0.

2. **ALI REZA / MASOUDI-MOFRAD, CONDITIONAL USE PERMIT, C-8753** - Application to allow an auto sales business in an ACBD – SP – TC (Ashland and Cherryland Business District Specific Plan-Transit Corridor) District, located at 16230 East 14<sup>th</sup> Street, approximately 240 feet south east of 162<sup>nd</sup> Avenue, unincorporated Ashland area of Alameda County, designated Assessor's Parcel Number: 080-0063-038-00. (Continued from September 9, 2008). **Staff Planner: Damien Curry.**

The staff recommendation was approval. Per the Board's request, a representative from Alameda County Redevelopment Agency was present. The Board asked staff the following initial questions:

- How would the proposed business fit with redevelopment plans for the business district
- Is the application compatible with the Ashland Cherryland Business District Plan

Ms. Hawryluk first explained the overall role of the Redevelopment Agency. The Redevelopment Agency will not recommend a specific direction regarding the application. She will provide an idea as to the general direction of the Agency, as it relates to the site. Ms. Hawryluk also wanted to clarify what appeared to be confusion on the Applicant's part about his businesses move from the prior site. In addition to the County process when purchasing property. The Hayward Area Recreational District purchased the property from the Holland Oil Company. The County purchased the site at 16305 East 14<sup>th</sup> Street from Hayward Area Recreation District. This is an important point of clarification. The County did not participate in the original transaction. The County has strong relocation liability and follows through on those responsibilities. In this case the County did not have responsibilities to a tenant, as there was no tenant at the site when the County purchased it. Ms. Hawryluk offered to give the Board further information as to County policy and relocation laws when property is purchased from an owner, and there

is a tenant. However for point of record in this case the County did not have an obligation to a tenant, as one did not exist at the time of purchase.

Currently there are several active Redevelopment projects. Phase I of the East 14<sup>th</sup> Street Streetscape Project spans from 150<sup>th</sup> Avenue to 162<sup>nd</sup> Avenue. The project ends approximately at the application site. Streetscape, Phase II is from 162<sup>nd</sup> Avenue to the 580 Freeway overpass. Phase II is a large project which will add a significant impact to East 14<sup>th</sup> Street. As with Phase I improvements include underground utilities, trees, lighting, benches, and enhanced medians. Engineering design drawings are being completed. The design phase should last from 9 months to 1 year. Improvements have been made to the area near the Bart Station. There is a new 40 unit condominium complex near 159<sup>th</sup> Avenue. The Sunrise Apartments were converted to condominiums with business units at street level. The property took advantage of the County, Façade Improvement Program. Don's Transmission and the Aftab Medical Center have also made façade improvements. Redevelopment is also working with Eden Housing to upgrade the Ashland Village Apartment complex at 165<sup>th</sup> Avenue. The Kent Street Senior Housing facility has recently been completed, in partnership with Mercy Housing. The County is working with Bart, and the Bayfair Mall to develop a transit oriented project. This will take years to develop, but conceptual design discussions are underway. The proposal will then move through a community process. In addition there are many on going programs which include, Graffiti Removal, and enhanced Code Enforcement. Approximately 460 code enforcement cases have been closed in the first year. At times Redevelopment comments may not necessarily be favorable to all parties involved, such as the Planning Department. The Redevelopment Agency perspective considers the future. The Agency tries to take the opportunity when implementing a program, or considering a business to ensure the Ashland Cherryland Business District guidelines are being supported in that business. This benefits the Ashland community by bringing back economic vitality to the East 14<sup>th</sup> Street corridor. The redevelopment process is multi pronged, and may take many years to come to fruition. Ms. Hawryluk provided a map of some of the projects along East 14<sup>th</sup> Street. In the future, the Redevelopment Agency will purchase additional sites on East 14<sup>th</sup> Street.

Board Questions for Redevelopment Agency staff were as follows:

- Is the subject site located in Phase II of the East 14<sup>th</sup> Streetscape Project
- Does the Redevelopment Agency have a specific objection to short term use for the site
- Will the site be utilized in the next 2 years
- Has the Redevelopment Agency talked with the Applicant
- Why doesn't the ACBD Plan exclude auto uses, as opposed to restrictive conditions

Ms. Hawryluk said Phase II of the East 14<sup>th</sup> Streetscape Project is currently underway. The project is long term. The design phase should last from 9 months to 1 year. Bidding, bond allocation and construct will follow. This could take an additional year. Implementation for Phase I took 1 year. Phase II is considerably longer. Redevelopment's goal is to eradicate blight, and property degradation. Eliminate under utilized parcels, and identify new business to populate East 14<sup>th</sup> Street. The goal is the same for all commercial avenues in the County. It is Redevelopment's goal to have every lot filled. However it is also Redevelopment's goal to support businesses that support the ACBD Plan. The ACBD Plan is one of the foundations that support the goal of redirecting the economic make up of East 14<sup>th</sup> Street. The neighborhood should serve businesses. Part of that is eradicating some of the businesses that are in place. It is difficult to go through a redevelopment process and change the commercial mix of business types. In the long term, the goals outlined in the Specific Plan will aid in the development and growth of East 14<sup>th</sup> Street. There are difficult decisions to make in the process. Often there are trade offs. Redevelopment likes to take every opportunity to move the overall goal forward. There is no outward objection to short

term permits. However once permits go into effect precedence can be set, allowing businesses to become non-conforming. Allowing a non-conforming use to continue is a difficult decision, the Board must ultimately make. Often short term permits continue to be extended. The Redevelopment Agency is there to provide their perspective. Perhaps the Agency can assist the Applicant in locating a more appropriate location. From a Redevelopment Agency perspective, the particular site is not the most desirous use, or the most appealing look relative to surrounding businesses. Agency staff did speak with the Applicant about the initial application. Discussion centered on concerns, and objections to the project. Alternate locations were not discussed. They can be explored at this time. When an area becomes vacant or in flux, the Redevelopment Agency uses the opportunity to let change, take place.

The Applicant Mr. Ray Mofrad addressed the following issues. Regarding signage: Mr. Mofrad showed photographs of the signage used at the prior auto sales site. He would like to re-use the old sign. It has been structurally refurbished, and re-painted. Mr. Mofrad told the Board that it had taken him 5 months to get this point in the application process. He requested a 5 year permit period, as opposed to a 3 year permit. Mr. Mofrad will meet with staff to review his proposed landscaping plan. Regarding the prior site, he did not get an offer of relocation assistance. He had to sell his auto inventory at the auction for 50 cents on the dollar. He did speak with Redevelopment staff. At the time Mr. Mofrad did not know that H.A.R.D. purchased the site of his former business. He is in favor of more parks for the area. However he is a victim of the move. Mr. Mofrad said he was at the prior site for 20 years. He also contributed to the community. He anticipated assistance from either the County or the City of Hayward. Assistance was not forthcoming. Although he did not want to re-locate he is ready to start over again, and continue contributing to the County. When he saw the vacant property across the street, he set his sites on that location. Board questions for the Applicant were as follows:

- Has the Applicant read the staff report
- Is the Applicant willing to comply with the ACBD Specific Plan
- Is the Applicant aware façade improvements are required

Mr. Mofrad confirmed that he read the staff report. He is willing to comply with the Specific Plan. The Streetscape Development stops at the corner of the new site. He is aware of the nature of the improvements. Light duty vehicles will be displayed in front of the property. Medium duty trucks will be displayed at the back of the site. None of the vehicles will exceed 15,000 lbs. Mr. Mofrad was also aware the site would require additional frontage improvements. He is willing to create a walk-in store front.

Ms. Marsha Norton was present representing the land owner, JW Silveria. She told the Board the landowner is aware the business must be in compliance. The property owner will support Mr. Mofrad in achieving that compliance. They will also speak with the Redevelopment Agency to obtain specifics.

Member Adesanya asked staff to confirm that the Applicant would be in compliance with the ACBD Plan as set forth on page #3 of the staff report. Staff confirmed that would be the case. The land use, in addition to Conditions of Approval would bring the use into compliance. Member Adesanya thought a 2 year permit period would be appropriate. The Applicant can further improve the site to ensure compliance with the ACBD Specific Plan; or the Redevelopment Agency may assist the Applicant in finding a more suitable location that the business can thrive at. This could prevent the County from losing a long term business.

The Chair thought the 3 year permit length with a transition, or compliance plan review in 2 years was acceptable. This will limit multiple re-locations, or provide guidelines for remaining at the current location. The Chair asked Counsel if it was possible to prohibit the use of canines for security. Counsel

confirmed the permit could be conditioned as such.

The Vice Chair thought a 2 year a permit period would be acceptable. The length is approximately the same completion period as Phase II of the East 14<sup>th</sup> Streetscape Plan.

Member Adesnaya moved to uphold the staff recommendation of approval, based on Tentative Findings. The following Conditions of Approval shall be added:

Canines shall not be used on the site for the purposes of providing security; and

The term of Conditional Use Permit C-8753 shall be for a period of 3 years. The Applicant shall return to the BZA in a period of 2 years for review. At such time the Applicant shall provide a relocation or transition plan; or be in substantial compliance with the Ashland Cherryland Business District Specific Plan.

The Chair asked Member Adesnaya to clarify if the refurbished freestanding signage should be replaced. Member Adesnaya confirmed within 60 days old signage should be replaced with new signage, per the staff recommendation. The Vice Chair seconded the motion to approve C-8753. Motion carried 3/0.

3. **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.**

Staff reviewed the application, and recommended approval of Conditional Use Permit, C-8766 Public testimony was opened.

The Applicant, Ms. Deanna Wood is proposing to place a hand and foot spa at the site. Ms. Wood has spent 2 years visiting sites in Castro Valley. The site has been vacant for 2 years. The Castro Valley Municipal Advisory Committee was in favor of approval. Ms. Wood has been a nail technician for 20 years. She has witnessed unsafe and unclean conditions with implements, and whirlpool baths. Her goal is to have a spa with a clean environment where women, men, and teens can come for beauty treatments. Customers will see sanitary practices in action. All practitioners will have State licensing. Products will be name brand, and labeled. The spa will also sell sandals and jewelry. The spa will also provide services for bridal parties. Ms. Woods is confident that Belle Piaz will be a shining star, and bring an upscale clientele to Castro Valley. This will improve the local economy. Hours of Operation will be from 11:00 a.m. to 7:00 p.m., mostly by appointment. There are 12 parking spaces adjacent to the building. Overflow parking in the rear can be shared after 6:00 p.m. Ms. Woods has visited the site daily to gauge use of the rear parking. Typically 2 to 3 spaces are utilized.

Board questions were as follows:

- What are the proposed week-end hours
- How many entrances are there to the site
- Does the facial area have a door
- Does the salon perform waxing
- Has the Applicant operated other businesses in the area

Ms. Wood said the Hours of Operation will be, Monday through Saturday 11:00 a.m. to 7:00 p.m. The spa will be closed on Sunday. There are three entrances to the spa, two in front of the building one in the rear. Although the products used will be odorless, this provides additional ventilation. The salon will not provide massage. There will an enclosed area for facials. A door is provided because the neck area of clients may be exposed during a facial. Waxing services will also be performed in an enclosed area. The salon will be upscale. However the services provided will give value. Ms. Woods surveyed other businesses in the vicinity. Pricing will be balanced, and on a sliding scale for teenagers and seniors.

Ms. Leticia Schwartz submitted comments that she wished to be read into the public record: *Please approve C-8766, Bella Piaz so I have some place to get a pedicure. I have spent 3 ½ years trying to get rid of a foot fungus I contracted from a "whirlpool foot bath" at a local pedicure establishment. Castro Valley needs a safe spa. Thank you.*

Public testimony was closed.

Member Adesanya commented that the retail aspect of the business supported the intent of the Castro Valley Specific Plan. Member Adesanya moved to uphold the staff recommendation of approval. The Hours of Operation are Monday through Saturday 11:00 a.m. To 7:00 p.m. The Vice Chair seconded the motion. Motion carried 3/0.

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 and October 8, 2008). **Staff Planner: Christine Greene.**

Staff reviewed the history of the application. Variance, V-12110 was continued from the October 8, 2008 Hearing. Staff was to determine if the General or Specific Plan was applicable regarding zoning. Staff recommended denial of the application. Initial Board questions were as follows:

- What zoning classification should the apply to the application for consideration
- Is the variance limited to the expansion of the non-conforming use

Counsel explained that when there is a conflict between the General and Specific Plan. The General Plan takes precedence. At this juncture the Applicant has not altered the application from a variance, to a use permit, or otherwise. Staff believes the use is non-conforming, as to parking. The property is zoned commercial. The tavern use is non-conforming to the extent the use pre dates the need for a cup. The conditional use permit requirement for tavern use went into effect in 1973. The Applicant is permitted by right to continue the use in a commercial zone. Any change to the non-conforming use, and the parking requires a permit. A variance is required to make any changes to the non-conforming parking arrangement. The area was re-zoned to commercial in 1973. Under commercial zoning the existing parking does not meet requirements. In 1968 zoning allowed tavern use, by right. When zoning was amended in 1973, tavern use required a conditional use permit. This tavern was in existence prior to 1973. Therefore this application is considered a non-conforming use. Public testimony was opened.

Mr. Bernie Hare was present representing the Applicant, Chong Ko. He has read the staff report. He was in agreement with staff that the General Plan takes precedence over the Specific Plan. Mr. Hare said it was his understanding according to the General Plan. The site is in compliance, with the exception of the

non-conforming parking. When the variance application was discussed on August 27, 2008 it was decided that it was more appropriate to withdraw the variance, and submit a conditional use permit. The stipulation was that fees paid would be applied to the new application. Ms. Ko is willing to withdraw the variance, if that would alleviate the issues. Mr. Hare asked Board Members their interpretation of the application. In response the Board had the following questions:

- Has the Applicant discussed the necessary requirements for CUP's and Variances
- Is the Applicant aware that different findings are required for each permit type
- Is the Applicant prepared to withdraw the Variance application
- Is there a signed parking lease agreement with the neighboring property owner
- What is the actual size of the parking area
- How long has the facility been used as a karaoke bar
- Have there been recent noise complaints

Mr. Hare has reviewed the Public Works Traffic Engineering Work Plan. He is in agreement that two of the parking spaces are within the public right of way. This can be resolved by removing the two spaces on the west side of the property. The parking lot will also be re-stripped. The additional leased parking area will be located on the north side of the building. This will create a flow through, around to the back of the building. Parking will be diagonal which will discourage cars from backing out into the street. He presented a draft of the lease agreement between the Usher Inn and Moyer's Paint. The lease agreement will be in perpetuity, and create a total of 32 spaces. He also presented a sketch of the parking layout. Mr. Hare clarified that a fence existed between the patio and the parking area. The facility has been used as a karaoke bar for 20 years. A license issued by the Sheriff's Department was in existence in 1995. More specific records do not exist. The Sheriff's Department archives records for 3 years. The license expired during the tenure of the previous owner. It was an administrative over site. A past employee has submitted affidavits that a license, did exist. Patrons have also submitted affidavits confirming karaoke entertainment has taken place for years. There have been no recent complaints. Originally a letter was submitted, and one of the issues was noise. That precipitated the application process.

The Chair asked Mr. Hare if he was formally withdrawing the variance application. Mr. Hare said he thought it would be prudent to withdraw the variance application, if a conditional use permit was to be submitted. Member Adesanya asked if the Alcohol Policy, distance of 500 feet between alcohol outlets would apply, or if any gray area exists. Counsel confirmed the Board of Supervisor's Alcohol Policy would apply to a conditional use permit. The Alcohol Policy adopted by the Board of Supervisors states there *should* be 500 feet between alcohol outlets. Therefore some gray area may exist. The Alcohol Policy would not apply to a variance. However in this case, multiple applications may be needed. A parking variance would still be necessary in conjunction with a condition use permit, for the tavern and karaoke use. It appears the Applicant is attempting to resolve parking issues by means of the proposed parking agreement with Moyer's Paint. This may be sufficient. However it would be necessary for staff to analyze any new application, to determine if addition permits are necessary.

Mr. Hare asked if parking could be grandfathered in. A cup application could be submitted with the site plan, along with the proposed parking arrangement. He also asked for conformation that fees paid thus far could be used toward future applications. Staff clarified the use of parking on an adjacent parcel would require a variance. Fees paid can be applied to a new application. Mr. Hare then asked if the interlocutory decision to allow the continuance of karaoke until the present hearing could continue while the new permit was being prepared. There have been no recent noise complaints from the public. The parking spaces on the adjacent site are currently being accessed. The arrangement has been successful. The Chair commented that when she visited the site, late yesterday, her observation was that although the sound was not a nuisance, there were a few concerns. A number of alcoholic beverages had been left in

the parking lot. There were also a few people hanging out near a bench. The screen door was open. Music from the bar could be heard on Usher Street. The sound dissipated as she got closer to Lewelling Boulevard. Mr. Hare told the Board that the bench area is a designated smoking area. The distance between the designated smoking area and the entrance is approximately 25 feet. The tavern proprietor Ms. Ko is sensitive about noise emanating of noise from the bar, especially on week-ends. One of the recommendations submitted by Comm Pre was to keep the tavern door shut. Mr. Hare and Ms. Ko are in agreement with Comm Pre's recommendations. Mr. Hare then withdrew Variance application, V-12110.

The Chair asked Counsel how the Board should proceed. Counsel said the Applicant could submit a new application. However the Board should exercise caution in expressing a position on the continuing operation of a non permitted use. The Board of Zoning Adjustments has the ability to approve or deny use permits, variances, and other zoning applications. She did not believe the Board had the authority to direct staff not to enforce ordinances that have been adopted. The Vice Chair asked Mr. Hare if he was aware of a complaint letter dated, October 10, 2008. The owner of the property at 15579 Usher Street was concerned. Mr. Hare said he unaware there had been any complaints. Staff interjected. The letter was not received by the Planning Department until October 21, 2008. Although dated October 10, 2008. Mr. Hare said he would review the letter, and discuss any issues with staff. Member Adesanya asked Mr. Hare if there were plans to expand the scope of the current use, intensity; or if he was seeking to make the present use, conforming. Mr. Hare said there is no anticipated expansion. On average 13 to 20 customers use the tavern at one time. There will be change to the operation, or floor space. The goal is to bring the current use into compliance with current zoning, and applicable laws. The proactive steps regarding parking are being taken to provide additional to alleviate any potential hazard. Public testimony was closed.

The Chair announced that staff should determine the direction of the application. The Board can then consider information put forward.

The Chair announced the matter regarding Variance application, V-12110 was concluded since the application had been withdrawn.

*The Chair called a brief recess at 5:37 p.m. The meeting reconvened at 5:45 p.m.*

Member Adesanya departed the Hearing at 5:45 p.m.

**APPROVAL OF MINUTES:** Approval of the Minutes of September 24 and October 8, 2008 were continued due to the lack of a quorum.

**STAFF COMMENTS & CORRESPONDENCE:** Staff announced that Member Pexioto will officially retire. Effective November 1, 2008.

**BOARD'S ANNOUNCEMENTS, COMMENTS AND REPORTS:** None.

**ADJOURNMENT:** There being no further business, the hearing adjourned at 5:47 p.m.

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ALBERT LOPEZ - SECRETARY  
WEST COUNTY BOARD OF ZONING ADJUSTMENTS