

MINUTES OF MEETING
WEST COUNTY BOARD OF ZONING ADJUSTMENTS
JULY 23, 2003
(APPROVED AUGUST 13, 2003)

The meeting was held at the hour of 1:30 p.m. in the Alameda County Building, 224 West Winton Avenue, Room 160, Hayward.

REGULAR MEETING: 1:30 p.m.

MEMBERS PRESENT: Members Dennis Botelho; Sharon Callahan; Frank Peixoto, Chair; Jewell Spalding.

MEMBERS EXCUSED: Member Ron Palmeri

OTHERS PRESENT: Phil Sawrey-Kubicek, Senior Planner; Richard Tarbell, Planner II; Kate Conner, Planner I; Eric Licko, Contract Planner; and Nilma Singh, Recording Secretary

There were approximately 18 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: None

CONSENT CALENDAR:

1. **BOB MASON, CONDITIONAL USE PERMIT, C-7756** – Application to modify use permit, C-7447 to allow: 1) storage for 20 vehicles; 2) increase from 125 to 145 horses; and 3) to add a feed store at an existing breeding, boarding and training facility for 125 horses, in an “A” (Agricultural) District, located at 24550 Palomares Road, east side, approximately ¼ mile south of Palo Verde Road, unincorporated Castro Valley area of Alameda County, bearing Assessor’s Parcel Number: 085A-2700-001-07. (Continued from December 11, 2002; February 26, March 26, April 23, May 28 and June 25, 2003; to be continued without discussion to August 13, 2003).
2. **RICHARD and LAURIE LINDBERGH, CONDITIONAL USE PERMIT, C-7988, VARIANCE, V-11605 and SITE DEVELOPMENT REVIEW, S-1813** – Application to allow construction and operation of a Type A service station and to construct a convenience store 10 feet within a Special Building Line (SBL) in a “TC” (Transit Corridor) District, located at 20925 Mission Boulevard, southwest corner of Medford Avenue, unincorporated Cherryland area of Alameda County, bearing Assessor’s Parcel Number: 414-0061-033-00. (Continued from October 9, January 8 and 22, 2003; to be continued without discussion to August 27, 2003).
3. **JOHN T. ARKEDER, CONDITIONAL USE PERMIT, C-8014** – Application

to allow construction of a secondary unit in a R-1-CSU-RV (Single Family Residential, Conditional Secondary Unit, Recreational Vehicle) District, located at 18975 Parsons Avenue, west side, approximately 150 feet south of Link Court, unincorporated Castro Valley area of Alameda County, bearing Assessor's Parcel Number: 084D-1328-007-01. (Continued from October 23, 2002, January 22 and April 9, 2003; to be continued without discussion to August 27, 2003).

4. **HOSANNA HOMES, CONDITIONAL USE PERMIT, C-8143** – Application to allow continued operation of a residential care facility adding two modular trailers (Applicant requests a ten year renewal period) in an “A” (Agricultural) District, located at 9998 Crow Canyon Road, west side, approximately one mile north of the intersection with Norris Canyon Road, unincorporated Castro Valley area of Alameda County, bearing Assessor's Parcel Number: 085-1902-001-00. (Continued from April 28, May 28, 2003; to be continued without discussion to August 13, 2003).
5. **L. FU/DAVID LAU, VARIANCE, V-11708** – Application to allow construction of three new dwellings providing: 1) six feet side yard where 15 feet is required; 2) zero foot setback from the driveway to two dwelling unit walls where 10 feet is required; and 3) 12 feet driveway where 20 feet is required; in a R-3 (Three Family Residence) District, located at 2256 Regent Way, southeast side, approximately 420 feet northeast of Cross Road, unincorporated Castro Valley area of Alameda County, bearing Assessor's Parcel Number: 084A-0270-006-00. (Continued from January 8, February 5 and 26, March 26 and May 14 and 28, and June 25, 2003; to be continued without discussion to August 27, 2003).
6. **WEST COAST REALTY/MARIO MAPOY, VARIANCE, V-11758** – Application to allow subdivision of one lot into two parcels thereby maintaining a nonconforming use (commercial building in a residential district without required off-street parking), in a R-1 (Single Family Residence) District, located at 21129 Haviland Avenue, west side, corner southwest of the intersection of Blossom Way, unincorporated Hayward area of Alameda County, bearing Assessor's Parcel Number: 0429-0028-029-00. (To be continued without discussion to August 13, 2003).

Member Botelho made the motion to approve the Consent Calendar per staff recommendations. Member Callahan seconded the motion, which carried 4/1. Member Palmeri was excused.

REGULAR CALENDAR:

1. **BRENDA BIGONGIARI, CONDITIONAL USE PERMIT, C-8169** – application to allow continued operation of a commercial recreational facility (Dance and Music School), in a P-D, ZU-2009 (Planned Development, 2009th Zoning Unit) District, located at 19615 Center Street, west side corner, southwest of the intersection with Edwards Lane, unincorporated Castro Valley area of Alameda County, bearing Assessor's Parcel Number: 084C-0680-005-05. (Continued from June 25, 2003).

Mr. Sawrey-Kubicek read the staff report. Member Botelho made the motion that the matter be referred to Planning Commission for modification of the PD District in order to have a longer expiration period, a ten year permit. Member Callaham seconded the motion, which carried 4/1. Member Palmeri was excused.

2. **KATI and ROBERT KNOX/STEVE MORI, CONDITIONAL USE PERMIT, C-8170** – Application to allow an eight bed residential care facility for the elderly in a single family dwelling, in a R-S-D-15 (Suburban Residence, 1,500 Minimum Building Site Area/Dwelling Unit) District, located at 1470-164th Avenue, north side, approximately 340 feet east of East 14th Street, unincorporated San Leandro area of Alameda County, bearing Assessor's Parcel Number: 0800-0071-033-04.

Ms. Conner read the project description. Robert Knox, Co-applicant, stated that they own a similar facility in San Leandro and the adjacent property, all Licensing requirements have been complied with and such a facility was much needed in the community. He requested an approval. Member Peixoto pointed out that the facility had only one bathroom. Although State requirement is one bathroom for eight residents, Mr. Knox said the facility would have one and a half bathrooms. Member Callaham asked if he agreed to all the recommended conditions. Mr. Knox said since he had not received a copy of the staff report, he was unaware of the conditions. The Chair suggested trailing the matter to the end of the agenda to give additional time for Mr. Knox to review the recommended conditions. Mr. Knox agreed and the matter was trailed.

Matter reconvened at the end of the agenda. Public testimony was re-opened. Mr. Knox concurred with the recommended conditions, adding that if approved for Alzheimer and Dementia patients, a security system would be installed. And in response to Member Spalding, he explained that this was assisted living with minimum staffing, one staff person on site. Member Botelho said that he had not seen any fence in the front as stated in the staff report. Mr. Sawrey-Kubicek pointed out that Condition 8 was relevant. In response to Member Callaham, Mr. Knox indicated that there were no future plans to combine both facilities.

Public testimony was closed. Member Botelho felt that if an approval was obtained by the Applicant in future for new types of residents, an additional condition should be added to reflect that this matter be reviewed by the Board. The Chair agreed. Public testimony was re-opened. Mr. Knox pointed out that a yearly review was already part of the recommended conditions, Condition 15. Member Botelho's concern was that a change could occur before the yearly review. Member Spalding said her concern was open space, a specific area, perhaps a patio for the residents. The Chair suggested modifying Condition 3 to reflect, "...provide more sufficient open space". Mr. Knox agreed. Public testimony was re-closed. Member Botelho made the motion to approve the application subject to the recommended conditions with the above modifications. Member Callaham seconded the motion, which carried 4/1. Member Palmeri was excused.

3. **GUSTAVO ARRIAZA/JEANNE K. SCHNEIDER, CONDITIONAL USE PERMIT, C-8175** – Application to allow sale of alcoholic beverages (beer and wine) by a mini market (1,440 square foot+ building), in a TA (Transit Access) District, located at 16661 East 14th Street, south side, approximately 115 feet northwest of Elgin Street, unincorporated San Leandro area of Alameda County, bearing Assessor's Parcel Number: 080B-0300-014-00.

Mr. Tarbell read the project description.

Public testimony was called for. Gustavo Arriaza, Applicant, said he has been working on this project for the last two years. His main business was groceries and alcohol (beer and wine) would only occupy one small area of the market.

Robert Wolfe, project architect, said the store was predominantly designed for a market. An approval would be an asset to the property and the neighborhood.

David Cota, representing CommPre, spoke against the proposal adding that CommPre has submitted a written statement. An approval would be in violation of the County Alcohol Policy as the market would be less than 500 feet within another existing outlet and in an area that was already over-concentrated with such facilities. Such a facility would also be harmful to the community and would encourage prostitution, loitering and crime. The existing sign also conflicts with the beautification of the area. The community supports the market but opposes the sale of alcohol. Mr. Cota disagreed with the third Finding and in reference to Condition #7, he stated that CommPre was no longer providing the Beverage Service class.

Public testimony was closed. Member Spalding stated that she could not make any of the Findings in the affirmative since two other alcohol outlets existed within 500 feet, and an approval would be inconsistent with the County Alcohol Policy and with the responses from Redevelopment Agency and Ashland Community Association. She made the motion to deny the application as recommended by staff. Member Callahan seconded the motion, which carried 4/1. Member Palmeri was excused.

4. **DAN MARCHAND, VARIANCE, V-11616** – Application to allow a fence eight feet high where six feet is the maximum allowed, in a R-1-L-BE-CSU-RV (Single Family Residence, Limited Agriculture, 5 Acre Minimum Building Site Area, 100 feet Median Lot Width, 30 feet Front Yard, Conditional Secondary Unit, Recreational Vehicle) District, located at 8600 Oak Tree Lane, southwest side, approximately 340 feet southeast of the intersection with Norris Canyon Road, unincorporated Castro Valley area of Alameda County, bearing Assessor's Parcel Number: 085-5000-001-09.

Mr. Sawrey-Kubicek read the project description.

Public testimony was called for. Mr. Richard Flynn, attorney representing the Applicant, commended staff on an accurate staff report. He concurred with the recommended conditions and urged an approval. Since the Applicant has installed landscaping, this fence would be an effective way to secure the landscape materials from wildlife. Member Botelho noted that the staff report states fencing on three sides of the property only. Mr. Flynn replied that he was not sure.

Public testimony was called for. Bonnie Hudson, property owner at 3508 Depot Road, in opposition, said that driving down Oak Street, one would see the eight foot fence first. There has not been a prior need for

such a high fence. All the neighbors were concerned with the numerous unpermitted work on the property.

Susan Pisani, property owner at 8680 Oak Tree Lane, also spoke against the proposal. She introduced photographs noting that this was the last of a series of unpermitted activities. There has been on-going complaints filed against Mr. Marchand for unpermitted grading and large retaining wall, unlicensed rental unit and the subject fence.

Jerry David, 8100 Oak Tree Lane, said he was not in favor of an approval. He would support a shorter, tapered fence. The current fence gives a 'jail-like setting' appearance. Member Callaham asked for the type of fencing material. Mr. David replied that he did not know.

Cynthia Pisani felt that the biggest concern was precedent setting. She asked why an approval would be granted if there were numerous out-standing complaints on file regarding the many unpermitted activities. In response to Member Spalding's comment that the complaints were recognized in the staff report, Ms. Pisani added that nothing has been resolved and some statements in the staff report were not correct.

Mr. Flynn, in rebuttal, said that the prior owner had obtained building permits for all improvements but the permits had been issued without zoning approvals. The property has been inspected by Building Department and fence installation has been put on hold. The applicant has also hired an engineer to work on the retaining wall. Member Callaham asked if a six foot high fence had been considered. Mr. Flynn replied that an eight foot high fence was to keep the deer out.

Public testimony was closed. Member Botelho noted that testimony provided for a prior variance indicated that deer could jump over an eight-foot high fence. Member Spalding disagreed, adding that perhaps an eight foot high fence would keep the deer out. Member Botelho made the motion that the matter be continued for thirty days to enable the Applicant to meet with the community to resolve some of their concerns and be available at the next hearing to answer questions regarding the type of landscaping. Member Callaham seconded the motion, which carried 4/1. Member Palmeri was excused.

4. **DONALD WALLACE, VARIANCE, V-11739** – Application to allow construction of a single family residence on a parcel without county road frontage (access to Fairview Avenue will be via an existing private road) in an A (Agricultural) District, located on Fairview Avenue, east side, approximately 940 feet north of China Court, unincorporated Fairview area of Alameda County, bearing Assessor's Parcel Number: 085A-6100-005-04. (Continued from May 28 and July 9, 2003).

Mr. Sawrey-Kubicek read the project description. No public testimony was submitted. The Chair continued the matter to September 10, 2003, as recommended by staff. Member Spalding suggested that the application be renoticed to reflect 'approximately 940 feet north of Five Canyons Boulevard'.

5. **ANA R. FLORES, VARIANCE, V-11761** – Application to allow conversion of an existing garage into a 900 square foot living unit, providing a three foot-six inch side yard where eight feet is required and providing 16 feet between buildings where 20 feet is required, in a R-S-D-20 (Suburban Residence, 2,000 square foot Minimum Building Site Area/Dwelling Unit) District, located at 1645 – 162nd Avenue, northwest side, approximately 240 feet northeast of Marcella Street, unincorporated Ashland area of Alameda County, bearing Assessor's Parcel Number: 080-0051-039-00. (Continued from July 9, 2003).

Mr. Licko read the project description.

Public testimony was called for. Phil Laureles representing Ms. Flores, described the proposal in detail and discussed the setbacks in detail. Member Spalding asked if this would be viewed as a secondary unit. Mr. Licko said it was not but was the second dwelling unit on the property and further explained the R-S-D District. A discussion followed.

Public testimony was closed. Member Botelho concurred with staff that the findings could not be made in the affirmative and that the garage could be demolished and rebuilt within conformance. He thought that the retaining wall was in a bad condition. Member Spalding said her concerns were over-development of the property and high density. She agreed that the findings could not be made in the affirmative and asked if this was redevelopment area. Mr. Licko replied no, adding that the subject property was zoned for multiple units. Member Botelho made the motion to deny the application. Member Callahan seconded the motion, which carried 4/1. Member Palmeri was excused.

6. **RICKY and LISA BOTELHO, VARIANCE, V-11767** – Application to retain an attached addition providing a five foot rear yard where 20 feet is required, in a R-1-CSU-RV (Single Family Residence – Conditional Secondary Unit, Recreational Vehicle) District, located at 4304 Circle Avenue, north side corner, northeast of Gyen Street, unincorporated Castro Valley area of Alameda County, bearing Assessor's Parcel Number: 084C-0676-002-02.

Mr. Tarbell read the project description. Member Botelho announced that the Applicants were not related to him.

Public testimony was called for. Lisa Botelho explained the project and urged an approved. Public testimony was closed. Member Botelho made the motion to approve the application subject to the recommended conditions. Member Callahan seconded the motion, which carried 4/1. Member Palmeri was excused.

7. **DHARMESH BHUKHAN, VARIANCE, V-11769** – Application to allow construction of a residence with a building height of 28 feet six inches where 25 feet is the maximum height allowed, in a R-1-B-E (Single Family Residence, 6,000 square foot Minimum Building site Area, 20 foot Front Yard, Seven foot Side Yard) District, located at 24051 Quinn Lane, west side, approximately 320 feet north of E Street, unincorporated Fairview area of Alameda County, bearing Assessor's Parcel Number: 0426-0100-131-00.

Mr. Licko read the project description. Member Botelho asked for the grade percentage. Mr. Sawrey-Kubicek explained that this was a two-story house with 30 feet rear elevation with a 28.5 feet average height. He acknowledged receipt of letters received in opposition and further described the circumstances surrounding this application. A discussion followed.

Public testimony was called for. James Jorgensen, builder, further provided an up-date on the completed construction and grading work. As one side of the property slopes more, his plan was to utilize this area. Two other houses in this area were over 34 feet. Public testimony was closed.

Member Spalding noted that special circumstances existed due to the slope and made the motion to adopt

the findings and approve the application subject to the two recommended conditions. Member Botelho seconded the motion, which carried 4/1. Member Palmeri was excused.

8. **JAG NARAYAN, VARIANCE, V-11770** – Application to allow construction of decks at the first and second levels of an existing residence that results in an average 32 foot four inch building height where 30 feet is the maximum height allowed, in a P-D (Planned Development) District, located at 19940 John Drive, south side, approximately 400 feet north of Camino Dolores, unincorporated Castro Valley area of Alameda County, bearing Assessor's Parcel Number: 084A-00185-034-00.

Mr. Tarbell read the project description.

Public testimony was called for. Larry Lepore, on behalf of the Applicant, thanked staff for their work and stated his concurrence with the recommended conditions. He further explained the project. Public testimony was closed.

Member Botelho made the motion to adopt the findings and approve the application subject to the two recommended conditions. Member Callahan seconded the motion, which carried 4/1. Member Palmeri was excused.

MINUTES: June 25 and July 9, 2003. Minutes were not available.

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.

STAFF COMMENTS & CORRESPONDENCE: None.

CHAIR'S REPORT: None.

BOARD ANNOUNCEMENTS, COMMENTS AND REPORTS:

The Chair noted the informational sheet on the increase of park dedication fees and a letter from Chamber of Commerce.

Member Botelho noted that the Board of Zoning Adjustments yearly review report would be presented at the Transportation Committee meeting on Monday. The Board has requested that BZA boardmembers attend the meeting if possible. Housing Element Report was also on the agenda.

Member Botelho also suggested a workshop on 1866th Zoning Unit but not to be held on a hearing day. Mr. Sawrey-Kubicek explained that the 'CSU' (Conditional Secondary Unit) portion has been deleted. Secondary units will be allowed if they meet all zoning requirements.

Although Member Spalding acknowledged the shortage of planning staff, she suggested that perhaps photographs, drawings and maps be included in their future package.

ADJOURNMENT:

There being no further business, the hearing adjourned at 4:10 p.m.

CHRIS BAZAR - SECRETARY
WEST COUNTY BOARD OF ZONING ADJUSTMENTS