

**MINUTES OF MEETING**  
**WEST COUNTY BOARD OF ZONING ADJUSTMENTS**  
**SEPTEMBER 10, 2003**  
**(APPROVED SEPTEMBER 24, 2003)**

The meeting was held at the hour of 6:00 p.m. in the Alameda County Building, 224 West Winton Avenue, Room 160, Hayward, CA.

**FIELD TRIP: 1:00 p.m.**

**MEMBERS PRESENT:** Member Frank Peixoto, Chair.

**MEMBERS EXCUSED:** Dennis Botelho; Ron Palmeri and Jewell Spalding.

**OTHERS PRESENT:** Phil Sawrey-Kubicek, Senior Planner

**FIELD TRIP:** The meeting adjourned to the field and the following properties were visited:

1. **MONTESSORI SCHOOL, PAMELA RIGG, CONDITIONAL USE PERMIT, C-8178** – Application to allow expansion of an existing nursery school and day care center from 60 to 90 children and construction of two attached additions, in a R-1-CSU-RV (Single Family Residence, Conditional Secondary Unit, Recreational Vehicle) District, located at 19234 Lake Chabot Road, east side, approximately 75 feet north of Barrett Court, unincorporated Castro Valley area of Alameda County, bearing Assessor's Parcel Number: 084A-0529-011-02.
2. **BRYAN J. PAYNE/POLLARD VENTURES, CONDITIONAL USE PERMIT, C-8197** – Application to allow operation of an indoor recreation facility (personal training studio) in a C-1 (Retail Business) District, located at 1340 Bockman Road, south side, approximately 145 feet west of Via Chiquita, unincorporated San Lorenzo area of Alameda County, bearing Assessor's Parcel Number: 0411-0069-001-01.
3. **EPIPHANY LUTHERAN CHURCH, CONDITIONAL USE PERMIT, C-8198** – Application to allow continued operation of a public charter school for up to 240 students on an existing church facility and to allow installation of six 24 feet x 60 feet portable buildings on the church site, in a R-S-D-20 (Suburban Residence, 2,000 square feet Minimum Building Site Area per dwelling) District, located at 16248 Carolyn Street, east side, approximately 100 feet north of Foothill Boulevard, unincorporated San Leandro area of Alameda County, bearing Assessor's Parcel Number: 080A-0188-001-05.
4. **KENNETH CHU, VARIANCE, V-11756** – Application to allow a lot (Parcel B) less than 10,000 square feet (9,254.4 square feet) where 10,000 square foot Minimum Building Site Area is required, as a result of a Boundary Adjustment, BA-02-03, in a R-1-B-E-CSU-RV (Single Family Residence, 10,000 square feet Minimum Building Site Area, Yards as specified, Community Service Unit, Recreational Vehicle) District, located at 18740 Lamson Road, east side, approximately 712 feet north of Seven Hills Road, unincorporated Castro Valley area of Alameda County, bearing Assessor's Parcel Number: 084D-1173-043-00.

5. **WEST COAST REALTY, VARIANCE, V-11773** – Application to allow subdivision of one parcel into two lots thereby reducing one lot in area from 5,000 square feet to 4,690 square feet minimum building site area, in a R-S-D-20 (Suburban Residence, 2,000 square foot Minimum Building Site Area/Dwelling Unit) District, located at 20955 Hathaway Avenue, southwest side, corner of the intersection with Dell Court, unincorporated Hayward area of Alameda County, bearing Assessor's Parcel Number: 0429-0041-075-00.
6. **NADER KURY, VARIANCE, V-11777** – Application to allow a 17 feet front yard at an existing residence where 20 foot front yard is required with subdivision of the parcel into two lots, in a R-1-CSU-RV (Single Family Residence, Conditional Secondary Unit, Recreation Vehicle) District, located at 2051 Miramar Avenue, south side, approximately 264 feet west of Stanton Avenue, unincorporated Castro Valley area of Alameda County, bearing Assessor's Parcel Number: 084B-0331-022-00.

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

**MEMBERS PRESENT:** Members Frank Peixoto, Chair; Dennis Botelho; Ron Palmeri and Jewell Spalding.

**MEMBERS EXCUSED:** None.

**OTHERS PRESENT:** Eric Chambliss, County Counsel; Tona Henninger, Code Enforcement Manager; Lacy Starling, Zoning Investigating Officer; Yvonne Grundy, Zoning Enforcement Secretary; Phil Sawrey-Kubicek, Senior Planner, Brett Lucas, Planner II; Shahreen Basunia, Planner I; Deric Licko, Contract Planner; Nilma Singh, Recording Secretary.

There were ten people in the audience.

**ANNOUNCEMENTS BY THE CHAIR:** None.

**A. CALL TO ORDER:**

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

**B. Neighborhood Preservation Ordinance Abatement Hearing**

**C. CONSENT CALENDAR:**

1. **BOB MASON, CONDITIONAL USE PERMIT, C-7756** - Application to modify Conditional 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, June 25

and July 23, 2003; to be continued without discussion to October 8, 2003).

2. **RONALD VARGAS, CONDITIONAL USE PERMIT, C-8141** – Application to allow continued operation of an outdoor storage yard, in a M-1 (Light Industrial) District, located at 22035 Meekland Avenue, southwest side, approximately 65 feet southeast of the intersection with Poplar Avenue, unincorporated Cherryland area of Alameda County, bearing Assessor's Parcel Number: 0429-0064-019-02. (Continued from April 9, June 11 and August 27, 2003; to be continued without discussion to October 8, 2003).
  
6. **ARMANDO PLASCENCIO, VARIANCE, V-11775** – Application to remodel an existing dwelling and construct a four car garage with a third dwelling, providing four parking spaces where six are required and five foot side yard where six feet and 15 feet are required, in a R-3-B-E (Four Family Residence, 8,750 square foot Minimum Building Site Area) District, located at 1507 – 166<sup>th</sup> Avenue, northwest side, approximately 715 feet southwest of Los Banos Street, unincorporated San Leandro area of Alameda County, bearing Assessor's Parcel Number: 0080-0076-009-00. (Continued from August 27, 2003).

Member Palmeri recommended moving Regular Calendar items 1 and 6 to the Consent Calendar. He made the motion to approve the Consent Calendar as recommended by staff with the above modifications. Member Spalding seconded the motion, which carried 4/0.

**D. REGULAR CALENDAR:**

1. **SANTE FE SPECIAL EVENTS, VARIANCE, V-11637 – Review of Conditions of Approval** that allowed expansion of a non-conforming use (commercial assembly hall and catering business in a residential district) by the addition of a patio cover and interior remodeling, in a R-1 (Single Family Residence) District, located at 118310 Ricardo Avenue, east side corner of the intersection with Hacienda Avenue, unincorporated Hayward area of Alameda County, bearing Assessor's Parcel Number: 0412-0065-001-00.

This item was moved to the Consent Calendar to be continued without discussion to October 8, 2003.

2. **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 corner, approximately 940 feet north of the intersection with Five Canyons Parkway, Fairview area of unincorporated Hayward, bearing Assessor's Parcel Number: 085A-6100-005-04. (Continued from May 28, July 9 and 23, 2003).

Ms. Basunia read the project description. Member Palmeri requested clarification from County Counsel on the nonconformity as stated on Page 2, last paragraph. Ms. Basunia replied that the lack of frontage on a County road was the nonconformity and Mr. Chambliss confirmed that Measure D was not a factor. In response to Member Spalding, Ms. Basunia further explained the history of the parcel. Member Palmeri asked for the reasons why the 1965 Variance, V-3255, was denied and if there has been any changes to the property itself since then. Ms. Basunia replied that it was denied due to lack of special circumstances and per Grant Deed, there has been no change. Member Spalding requested confirmation that the only reason this would not be considered as a building site was the lack of frontage and if there were other

similar lots. Ms. Basunia replied yes adding that no other variances have been approved and there were three other similar parcels, one of which did not have a building on it.

Public testimony was called for. Leslie Williams spoke on behalf of the Applicant, Mr. Wallace. Although nonconformity was the reason for the denial recommendation, he felt that Variances were applied to take care of the nonconformities. An approval would not set a precedent as it would be a continuance of the trend of parcels with dwellings. Mr. Williams pointed out that twenty-five houses will be built less than a mile away and felt that the access road, used by other neighbors, was wide enough for emergency vehicles. He urged an approval.

Ken Everett, property owner at 26048 Fairview Avenue, said he supported the proposal. He felt that if laws could be changed to accommodate the new twenty-five home development, individual homes should be allowed also. Member Spalding pointed out that this development was approved before Measure D. She asked how many parcels had access through the gravel road. Mr. Everett replied three existing homes and 5-7 undeveloped parcels, which were in the same circumstances as the Applicant.

Don Keller, 25900 Fairview Avenue, said he has lived in this area for thirty-one years and supported Mr. Wallace's proposal. The access road was an all-weather road.

Public testimony was closed. Member Spalding asked if this plan was to construct only one dwelling and if he, Mr. Wallace, was familiar with East Bay Regional Park District's involvement with the easement. County Counsel replied that under Measure D, subdivision would not be allowed. Member Botelho asked if the gravel road was an easement or only a road. If it was a road, he asked if it could be paved with sidewalk installed. Ms. Basunia replied that it was an easement and Mr. Sawrey-Kubicek added that the Applicant would have to go through the private street process. Member Spalding said that a lot of neighbors would not support a paved private street with sidewalks as they would like to retain the agricultural environment. While stating that two identical variances, without going through a private street process, had been denied in the past because the findings would not be made in the affirmative, Member Palmeri thought that the Applicant should first go through a private street process. He could not make the findings in the affirmative. Member Botelho agreed with him. Member Palmeri made the motion to deny the application as recommended by staff. Member Botelho seconded the motion, which carried 4/0.

3. **REED and JEANETTE ADAMS, VARIANCE, V-11771** – Application to allow construction of a 24 feet x 32 feet, one story addition to a residence providing a 12 foot minimum front yard where 20 feet is required, in a R-1-B-E-CSU-RV (Single Family Residence, 7,000 square feet Minimum Building Site Area, 20 foot Front Yard seven foot Side Yard, Conditional Secondary Unit, Recreational Vehicle) District, located at 18517 Greenridge Court, northwest side, approximately 228 feet southwest of Greenridge Road, unincorporated Castro Valley area of Alameda County, bearing Assessor's Parcel Number: 0085-1613-008-00. (Continued from August 13, 2003).

Mr. Licko read the project description.

Public testimony was called for. Craig Adams, Applicant, stated that the size has been reduced with additional landscaping. Jeanette Adams explained that the reason to build in the front was due to the slope in the rear which would have been costly to develop. It would have also blocked the sun and the neighbor's view. Member Botelho asked if they were aware of the CC&R's. She replied yes.

Adrienne Harley, 18509 Greenridge Court, pointed out that the Applicants' house was located on the curve but had similar dwellings. She also said that the local homeowner's association was not current.

Public testimony was closed. The Chair asked if the configuration of the lot and the rear slope could be considered special circumstances. Mr. Licko said yes and further explained the reduction in size which now provided a 16 feet 6 inch front yard. Member Palmeri felt that the plan could be re-designed to provide the required setbacks and cost was not a special circumstance. He was not sure if being a corner lot with reduced setback made a difference. These were all similar tract homes. He could not make the first finding. The Chair pointed out that the first condition currently reads 14 foot 2 inches. Mr. Sawrey-Kubick explained that if approved, the condition would be modified to reflect 16 feet 6 inches and would be subject to Exhibit C. Member Spalding made the motion to approve the application subject to the three recommended conditions. There was no second. Member Palmeri said he could not make the first findings as there was no special circumstance and made a motion to deny the application. Member Botelho seconded the motion. The Chair and Member Spalding voted no. The Chair announced that the matter would now be referred to the Planning Commission on a 2/2 vote.

4. **JARNAIL S. UBHI, VARIANCE, V-11772** – Application to allow construction of a single family residence 36 feet in height where 25 feet is the maximum, in a R-1-RV (Single Family Residence, Recreational Vehicle) District, located at 16859 Robey Drive, west side, approximately 328 feet southwest of 167<sup>th</sup> Avenue, unincorporated Castro Valley area of Alameda County, bearing Assessor's Parcel Number: 080A-0220-007-00. (Continued from August 13, 2003).

Mr. Licko read the project description noting that the Architect was available with revised plans. Member Botelho asked for the height of the building and pointed out that the matter was continued at the last hearing to allow time for staff to up-date the staff report. Since the staff report did not reflect the changes, it was difficult to make a decision. Mr. Licko explained that the only issue was the height of the garage above the street level and no changes have been made in the plans. Member Spalding suggested a continuance to provide clarity in the staff report.

Public testimony was called for. Stan Nielsen, Architect, explained, in detail, that the level of the garage was lowered and the actual height of the building would be 34 feet six inches.

Public testimony was closed. Member Spalding made the motion to approve the application for a building height of 34 feet – six inches subject to the four recommended conditions. Member Palmeri said he agreed with Member Botelho that when the staff report does not reflect correct information, it becomes difficult to make the right decision. He seconded the motion, which carried 4/0.

5. **WEST COAST REALTY, VARIANCE, V-11773** – Application to allow subdivision of one parcel into two lots thereby reducing one lot in area from 5,000 square feet to 4,690 square feet minimum building site area, in a R-S-D-20 (Suburban Residence, 2,000 square foot Minimum Building Site Area/Dwelling Unit) District, located at 20955 Hathaway Avenue, southwest side, corner of the intersection with Dell Court, unincorporated Hayward area of Alameda County, bearing Assessor's Parcel Number: 0429-0041-075-00. (Continued from August 13, 2003).

Mr. Lucas read the project description. Since the initial proposal was denied by the Cherryland Home Association, the plan has been modified such that the second lot was now 4,999.3 square feet.

Public testimony was called for. Mario Mapoy explained the project in detail and addressed some of the neighbors' concerns. Most of the neighbors do not have the complete information hence were concerned. The proposal was to build a new house with an attached two-car garage. Sidewalk will be installed and this would not be a rental unit. He submitted a copy of the service calls made on this property from the Sheriff's Department, adding that this development would take care of the problems/criminal activities on site. In response to Member Palmeri, Mr. Mapoy re-stated that a two-car garage was proposed for both the new and the existing dwellings.

Elizabeth Gibbs, 21008 Hathaway Avenue, said she has called the Sheriff's Department on numerous occasions in the past for all the unlawful activities on this property. She supported the project.

Public testimony was closed. Member Spalding, in reference to Finding #3, disagreed that a precedent would be set since this area was already built out. Mr. Sawrey-Kubicek explained the possibility of subdivision of other lots in the Cherryland area. Member Spalding complimented Mr. Mapoy for the project and made the motion to approve the application subject to the two recommended conditions. Member Botelho seconded the motion, which carried 4/0.

6. **ARMANDO PLASCENCIO, VARIANCE, V-11775** – Application to remodel an existing dwelling and construct a four car garage with a third dwelling, providing four parking spaces where six are required and five foot side yard where six feet and 15 feet are required, in a R-3-B-E (Four Family Residence, 8,750 square foot Minimum Building Site Area) District, located at 1507 – 166<sup>th</sup> Avenue, northwest side, approximately 715 feet southwest of Los Banos Street, unincorporated San Leandro area of Alameda County, bearing Assessor's Parcel Number: 0080-0076-009-00. (Continued from August 27, 2003).

This item was moved to the Consent Calendar to be continued without discussion to September 24, 2003.

**APPROVAL OF MINUTES** - August 13 and August 27, 2003. The Chair pointed out that there was no public hearing on August 27 but on the 28<sup>th</sup>. With this correction, he made the motion to approve both September 13 and August 27 Minutes as submitted. Member Botelho seconded the motion, which carried 4/0.

#### **OPEN FORUM:**

Member Spalding noted that the problem of incorrect staff report has been a consistent problem. The Chair asked if County Counsel would be available at all future public hearings. Mr. Chambliss replied yes, at the request of the Board of Supervisors. Mr. Licko explained that the Applicant had chosen to bring his revised plans at the hearing hence the staff report had not been up-dated. Member Palmeri stated that in the past, plans were brought in during the hearing that were different than what had been included in their package. These plans would reflect differently than the staff report. He further explained that he based his findings on the checklist provided to the Board members at their initial workshop. He was of the understanding that special circumstances was related to the land/property.

#### **STAFF COMMENTS & CORRESPONDENCE:**

Mr. Sawrey-Kubicek announced that there was a conference on Zoning and Land Use Law on December 11<sup>th</sup> in Sacramento. A copy of the flier would be included in the next Board packages.

**CHAIR'S REPORT:** None.

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

**ADJOURNMENT:** There being no further business, the hearing was adjourned at 8:15 p.m.

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**CHRIS BAZAR - SECRETARY  
WEST COUNTY BOARD OF ZONING ADJUSTMENTS**