

MINUTES OF MEETING
WEST COUNTY BOARD OF ZONING ADJUSTMENTS
FEBRUARY 27, 2008
(APPROVED MARCH 12, 2008)

The Meeting was held at the hour of 1:30 in the Public hearing Room at 224 West Winton Avenue, Hayward, CA 94544.

REGULAR MEETING: 1:30 p.m.

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

MEMBERS EXCUSED: None.

OTHERS PRESENT: Jana Beatty, Planner III; Andrea Weddle, County Counsel; and Yvonne Bea Grundy, Recording Secretary.

There were approximately 11 people in the audience.

CALL TO ORDER: The meeting was called to order by the Vice Chair at 1:35 p.m.

ANNOUNCEMENTS BY THE VICE CHAIR: The Vice Chair announced that the Chair; and Member Adesanya would arrive late to the meeting.

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.

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; and January 9, 2008; To be continued to April 23, 2008). **Planner: Pat Anekayuwat.**

2. **METRO PCS, CONDITIONAL USE PERMIT, C-8708** - Application to allow continued operation of a cell site, in an “A” (Agricultural) District, located at 23207 Hollis Canyon Road, east side approximately 100 feet north of Interstate - 580 Freeway, Unincorporated Castro Valley Area of Alameda County, designated Assessor’s Parcel Number: 085A-1150-001-05. (Continued to March 26, 2008). **Staff Planner: Richard Tarbell.**

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

REGULAR CALENDAR

1. **T MOBILE, CONDITIONAL USE PERMIT, C-8662** – Application to allow a telecommunications facility (Cell Site) in a P-D (ZU-1334, 1336, 1341 Zoning Units) District, located at Coolidge Court, northeast side corner of Summer Glen Place, unincorporated Castro Valley area of Alameda County, bearing County Assessor's designation: 085A-0100-002-08. (Continued from December 12, 2007). **Staff Planner: Christine Greene.**

Staff reviewed the history of the application. The proposal went before the Castro Valley Municipal Advisory Committee in December of 2007 and in February 2008. Several neighbors attended both meetings, and expressed opposition to the project. The application was continued at the December CVMAC Meeting to allow the Applicant to attend the Palomares Canyon HOA Meeting. However there was not a representative present at the February CVMAC to discuss their findings. The CVMAC did recommend approval at the February Meeting based on testimony from the Applicant, and existing plans. The Applicant has modified the application to reflect feed back received from the HOA, and CVMAC. The equipment cabinets have been re-located on the site to provide better screening. The staff recommendation is approval. Public testimony was opened.

Ms. Kelly Pepper was present, representing T-Mobile. The telecommunications equipment will be installed near the East Bay Mud water tank located at Summer Glen Place and Coolidge Court. The antennas and cabinets will be moved back 20 feet and slightly rotated. To further screen the visual impact. Existing trees at the site provide camouflage. Additional landscaping will also be added to further obscure the cabinets. The new placement was as a result of the CVMAC and HOA recommendations. The installation will consist of 2 antenna poles each 13 ½ feet in height, and 3 antenna cabinets. Both antennas and cabinets will be brown in color, to blend with the surroundings. The corresponding drawings have just been completed, and are currently before the Board. Ms. Pepper confirmed that she had made a presentation for both the Palomares Hills HOA on Jan 29th and the Summer Glen HOA on Feb 6th. A mix of concerns were raised at both meetings which include, possible erosion as a result of the installation, sound emission, visibility of equipment cabinets, and the emission of EMF Signals. Ms. Pepper explained at the meetings that the project is small, in terms of scope. The proposal is in compliance with the Alameda County Building Department. An independent engineering company was retained to conduct testing of EMF Signals. Testing levels were in the low range of, FCC allowances. The project will comply with all FCC Standards. The sound emitted from the equipment cabinets is equivalent to the sound of a refrigerator. Sound will only be detectable from the East Bay Mud site due to the elevated, outdoor location. Board questions for the Applicant were as follows:

- Will co-location be allowed for other communications carriers
- Is there a limitation to the number of carriers allowed for co-location
- Is there an equipment limitation at the site
- Is it within the Board's per view to limit the height of telecom equipment

Ms. Pepper told the Board that it would be acceptable for other carriers to co-location. Staff explained that each application would be considered on an individual basis. There is no stated limit regarding width in Telecom Design Guidelines. It is likely that any additional carriers would have poles that exceed 13 ½ feet in height. Potentially the amount of equipment would increase in width and/or size. Ms. Pepper clarified that engineers can customize designs to some extent, depending on the requirements of the carrier. At this time there are no plans for additional carriers at the site.

Ms. Barbara Gain read aloud from a cover letter that had been submitted. A petition with the names of

neighbors, opposed to the project was attached. Ms. Gains apologized for the late participation of the Summerglen HOA in the comment process. Members were not aware of the T-Mobile Presentation or the February CVMAC Meeting, until they were notified by the Palomares Hills HOA, January 31 2008. This notification was 52 days after the initial CVMAC Meeting, and 11 days prior to either meeting. As a result the Summerglen HOA was not given an opportunity to respond in a timely fashion. The Summerglen neighborhood is actually closer to the site than Palomares Hills. The CVMAC Members advised the Summerglen residents to give their input at the BZA Meeting. The petition area covers the homes most affected by the proposal. There are 116 homes in the subdivision. Out of the canvas, 76 homes were contacted. Ms. Gain was not able to contact 46 of the homeowners due to the time constraint. The percentage of homes that were opposed to the telecom site and wanted to stop the installation was 47%. Based on the percentage of homes that were in opposition to the project, Ms. Gain felt it was fair to assume that additional votes to deny the application would have been obtained. The percentage had the potential to rise. Homes on Coolidge Court were also surveyed. Out of the 29 homes, 8 were against the proposal. This is 27% in favor of, stopping the installation. Since a large percentage of residents were not available for the survey. The survey was expanded to include, 27 homes on Jensen Ranch Road, Greenville Place at Summer Glen Place, and Villareal Road. The poll resulted in contact with 13 residences. All of which opposed the project. Ms. Gains asked the Board to deny the application, and respectfully consider the opposition of the neighbors. Additional Board questions were as follows:

- Where will the T-Mobile facility be placed
- Can the antenna and equipment be placed further back on the site
- Can the antenna and equipment be further rotated
- Will the 13 foot tower be shielded by the trees at the site
- Will the conduits be buried underground
- Can the Board consider the possible health effects from emission of EMF Signals
- Why did the CVMAC not consider another continuance

Ms. Gains explained that The Summerglen neighborhood is below the site. The site is 100% visible from Coolidge Court. Drainage ditches will be put onto the hillside, which will also be visible. The neighbors are very concerned about adding future equipment as a result of co-location. The updated proposal moves the equipment further back on the site. However it will still be visible. Noise will also be a factor. The neighbors do not want to take a risk of exposure to EMF Signals. They do not feel the FCC studies have been definitive. The Vice Chair pointed out that the FCC does not allow the consideration of possible health affects of EMF Signals when considering an application. Ms. Gains said none the less, property values of homes near the site will be affected. A home that is not near a tower will have more value. The fact that a communications facility is nearby will have to be disclosed when selling a property. The Chair asked for clarification as to how the updated proposal would affect visibility. Staff said that a Condition of Approval had been added which requires a landscaping plan. Mature vegetation will be installed around the equipment. The landscaping plan will require approval by the Planning Director. The Chair asked that the local Home Owners Associations can also review the landscaping plan. The HOAS can submit their comments to the Planning Director, and the Applicant. Staff reported that the CVMAC did not want to further continue the application. They felt the neighborhood had been noticed. There would also be further opportunity to discuss the application, at the BZA meeting. Staff confirmed that the neighbors within the vicinity of the site were noticed for the both the CVMAC, and BZA Meetings. Ms. Gains said although they did finally get late notice. For the most part the decision to allow the site had already been made. Since they did not get to participate from the beginning, Summerglen did not have the opportunity to submit recommendations.

Elvira Lewinsky told the Board she lives at 20003 Summercrest Drive. Her home is in the immediate area, on the west side from Coolidge Court. In addition to her concerns about the noise level and the

close proximity of the EMF levels. There may be a danger to wildlife, also children in the neighborhood. The area is rural. Ms. Lewinsky can hear sounds from the freeway which is miles away. The telecom site is only 250 feet away. She attended both the HOA and CVMAC Meetings. When she went door to door to collect signatures, most people were unaware of the project. Once they were told, they opposed the installation. Approving the project will set precedence for the installation of more antennas. Co-located antennas will increase the size of the equipment, intensifying the affect. The installation will only benefit T-Mobile. The antennas will only cover an area of ½ mile to 1 mile. The service would be limited. Most residents in the area are elderly, and do not use a cell phone. Other carriers provide service to people that currently have a cell phone. Ms. Lewinsky said she understands that T-Mobile wants to use the site because there is road access. Ms. Lewinsky said she spoke to Ms. Pepper about the location of the antennas. She was told that the indicated spot is the location that, EBMUD would approve. However there is more open area further back from the site.

Teresa Hulten told the Board said she was also concerned about EMF levels. She lives at 20061 Summercrest Drive, 5 homes from the water tower. Coolidge Court is on the west side. The proposed installation is in the center of a rural residential area. Ms. Hulten will clearly see the installation from her home. The neighbors on Summerridge Drive and Summercrest Drive will also see the installation. The foliage on the trees does not extend to the ground. Even if the antennas are moved to the rear of the site, they will still be visible. The area between the trees and the water tower is very small. Children explore and play near the water tower. This is commercial installation, in a residential neighborhood. It is unknown what the affect of EMF emissions will be. Therefore any prospective home buyers will not know the affects. The Chair pointed out that there are telecom antennas installed in residential neighborhoods, schools and churches. Regarding co-location, the Conditions of Approval, and Telecom Guidelines encourage co-location with other carriers. Ms. Hulten acknowledged the Chairs point. However she and the neighbors wanted to take full advantage of the opportunity to oppose the project at this juncture. Prior to installation. Member Gil asked Ms. Hulten what she thought of the existing water tower. Ms. Hulten responded that it was built in as an attractive design as possible, considering the water tower's function. The water tower has trees surrounding it, and was in the neighborhood when she arrived. Water is also a necessity. Ms. Hulten did not think it posed the same danger to children as a telecom site would. Member Gil commented that the water tower could also be dangerous, if the tower broke. Member Clark agreed that the affects, could be devastating.

Brenda Seuss lives behind the prospective installation site. The EBMUD site is not the only available location. There is open farming land in the vicinity. This may be a preferable location. The water tower was in existence when she moved to the area. She has to accept that reality. However if 1 telecom project is approved, more will follow. One of the petition signers had a T-Mobile antenna installed at their church site. They are sorry now. The tower is large and unsightly. The Chair asked Ms. Seuss how many homes were located in Summerglen. Someone interjected from the audience and confirmed there were 116 homes. Ms. Seuss said the residents do not want any towers in the neighborhood. Ms. Seuss attempted to get more petition signatures. However a lot of the residents did not get to participate, due to the short notice and long holiday week-end.

Ms. Pepper returned to testify. She clarified that if additional carriers co-located, they would have separate equipment cabinets. Each carrier's needs would have to be addressed at that time. The cabinets for the T-Mobile installation are approximately 2 ½ feet deep, by 4 feet wide, and 6 feet in height. There are 3 cabinets. One cabinet provides power back up, in the event of an emergency. Further Board questions for Ms. Pepper were as follows:

- Does the site provide coverage on the I 580 Freeway

- Can the equipment cabinets be set partially or completely below ground
- What is the distance of the closest antenna to the site
- How many antennas are in the area
- What is the coverage area of other antennas in the area
- What is the required distance of telecom equipment from homes

Ms. Pepper told the Board that the proposed cabinets are, above ground. An under ground vault would require a very large hole. There would also be OSHA requirements. It has been done however typically this type of installation is used in highly visible locations. The advantage of the proposed site is limited visibility and surrounding foliage. Sound would be mitigated somewhat with an underground equipment installation. However that does not mitigate the wind sheer noise from the antenna. Regarding co-location, currently no other carriers have come forward. Each proposal would have to be considered when put forward. East Bay Mud would have to approve an underground design. On average an antenna will cover ½ to 1 mile. This estimate is for suburban area with lots of hills and/or building density. Coverage also depends on the topography of the area. The proposed installation site will cover a distance of 1 to 2 miles. There may be some inadvertent coverage of the I-580 Freeway. However the coverage focus is the surrounding neighborhood, including Palomares and Jensen Road areas. Ms. Pepper did not know the total number of carriers in the area, or the next closest T-Mobile tower. The Planning Department should have access to data confirming the number of antennas within 1,000 feet of the site. Public testimony was closed.

The Chair asked staff their opinion of an underground cabinet installation. Staff did not think an underground installation would be suitable for the site. The Applicant would probably lose their CEQA exemption due to the amount of grading that would be necessary. A geotechnical investigation and initial study would also be necessary. The installation would probably need to be a minimum of 8 feet deep, to allow a person to work in the hole. In comparison, the proposed design is partially screened by existing foliage. The additional of mature landscaping would augment what is currently at the site. Regarding sound emission, there probably would be audible sound. Several Board Members commented that they observed noise emitting from other telecom sites. Some telecom facilities were unsightly due to the number of antennas, and proliferation of equipment. Based on an aerial photo of the site, staff estimated the closest homes to be 280 feet away. The Board Members referred to the Telecommunications Design Guidelines. Guidelines recommend that residences be a minimum of 300 feet from telecom installations. Staff clarified that the 300 foot rule, relates to a visual shield. Although the estimated distance is 280 feet, Conditions of Approval provide a visual shield. Public testimony was re-opened to speak inquired of Ms. Pepper.

Board Members again asked if there was sufficient distance within the EBMUD easement to move the antennas back an additional 20 feet. Ms. Pepper explained that the distance from the property line to the nearest home was, approximately 300 feet. This measurement would be in compliance with Telecom Design Guidelines. There may be room to push the installation back an additional 20 feet. However the goal of the proposed design was to minimize the visual impact. In addition care was also taken to avoid root systems, and take advantage of the back drop of, existing trees. Public testimony was closed.

Board Members discussed how the language and/or conditions could be modified, to minimize visual impact. The Chair thought the Board should determine the exact language. Language should be specific to insure that Conditions do indeed minimize impact, as defined in H-2 of the Telecommunications Guidelines. Permit language should also match with the modified Site Map A-2. The Site Map should also include the exact location of antennas and cabinets. Board Members were not able to determine the exact distance of the antennas to the closest home. Ms. Pepper interjected and acknowledged that the distance had not been surveyed. The equipment cabinets would need to be placed approximately 20 feet

from the antennas. Board Members asked if antenna height could be limited. County Counsel pointed out that one of the Conditions of Approval, limits the height of the T-Mobile antenna to 15 feet. The Board responded that the Condition does not take into account any future, co-located carriers. The staff report was also unclear. Staff clarified that each co-location design would be considered on an individual basis. The Board posed a continuance to clarify language regarding co-location, heights and limitations. Public testimony was re-opened.

Ms. Pepper said she would rather not continue the application. There are no other antennas within 1,000 feet from the site. The East Bay Mud site was selected because the property itself was non-residential. She was sure that T-Mobile could comply with requested conditions. However if the application had to be continued, she would like the 1st possible Hearing date. Staff confirmed that the March 26, 2006 Hearing was available. The Chair asked that consideration be given to a semi submerged installation design. Noise mitigation methods should also be researched. Frequencies, circumference coverage and surrounding antennas should also be determined. Public testimony was closed.

Member Clark motioned to continue C-8662 to the March 26, 2008 Hearing. Member Gil seconded the motion. Motion carried 5/0.

2. **CHOONG HYUN PAIK, VARIANCE, V-12096** – Application to consider an application to allow subdivision of one site into two lots, with front yards of 13.66 feet, and 14.45 feet where 20 feet is the minimum required; and side yards of 3.71 feet, and 4.83 feet where 5 feet is the minimum required, in an R-2-B-E (Two Family Residence, 7,500 square foot Minimum Building Site Area) District, located at 21415 and 21437 Locust Street, southwest side, approximately 250 feet northwest of Grove Way in the unincorporated Ashland area of Alameda County, designated Assessor's Parcel Number: 414-0086-074-00. **Staff Planner: Christine Greene.**

Staff reviewed the application. The Variance is to make one site into two lots, with reduced front and side yards. There are two existing single family homes on the lot. The parcel would be divided in the center. Each lot would meet the Ordinance requirement of a Minimum Building Site Area of 7,500 square foot. The variance is not for building site area. The variance is for the setback for the home built in the 1920's. Each home on the site was built slightly askew. The recommendation was approval. Staff said there were no open Neighborhood Preservation Ordinance violations on the property. The construction debris present, and vehicles, parked on unpaved surfaces may be as a result of on going work at the property. The Vice Chair said he was familiar with the property. He used to be the postman for that area. The cottage was the original home. The cottage was set back at the rear of the parcel, with a mail box toward the front. There was no second story at that time. Staff said there were no permits on record for the 1920's home. When the original structure was built, the Zoning Ordinance did not exist. Staff did not have building records available for the expansion of the home located at the front of the parcel. Board Members asked if the second home was in compliance, when it was built. Staff said it would depend on the time of construction. The age of the 2nd home has yet to be confirmed. There may not have been side or front yard setbacks in effect at that time. Public testimony was opened.

The Applicant, Mr. Choon Hyun Paik was present. He showed the Board, the permits he had obtained. There are now 2 homes on the parcel. Mr. Paik said he submitted a blue print to the Building Department, and received a permit to remodel/expand 21437 Locust Street. Someone from the Building Department came to the property in August. A Stop Work Order was placed on the property. Apparently a discrepancy was found. Mr. Paik was told by the Building Department that the lot had been subdivided sometime in the past. He was also told that he could not encroach into the front yard with construction.

The Board asked the following questions:

- Is it necessary for the Applicant to sub-divide
- What is the Building Department's goal and intent
- Is it Mr. Paik's intent to subdivide the property
- What is the age of all dwellings on the property
- Are there Building Records for the second dwelling on the property
- Are the existing homes in compliance with the R-2 Zoning Density
- Was the non-conforming structure was a cottage, shed, etc.
- Is there documentation confirming the original footprint of the non-conforming structure
- Has the Applicant exceeded the 50% expansion threshold on the non-conforming structure
- What has been built on the concrete pad at the rear of the parcel

Staff did not have official records of the footprint of the 2nd home. However they assumed the front section, was the oldest portion. The current setbacks would be nonconforming. It appears the density is in compliance with the R-2 Zoning on the smaller 1920's home. However, if the Applicant subdivides the lot, a variance would be required for the non-coming setbacks. Mr. Paik said the Building Department told him he needed to split the lot in order to bring each property into compliance. He does not want to subdivide the property. The Building Department recommended the subdivision. He lives in the larger home, and his sister lives in the smaller home. The concrete pad at the rear of the parcel was on the property when he purchased it. Throughout the construction process he has placed materials on the concrete pad.

Mr. Isaac Caselis testified that he lives at 21391 Locust Street. His home is one home from Mr. Paik. Mr. Paik is a good neighbor. Mr. Caselis is also friendly with many people in the neighborhood. People come to him to discuss neighborhood issues. The neighbors are concerned with the increase of 3 & 4 unit complexes on the block. Parking is an issue. There is a triplex across the street from his home. Now, there is no more available parking on the street. The Chair asked if the new Wal-Mart [Walgreens] was located behind his street. Mr. Caselis confirmed that it was. The neighborhood was being overbuilt without the consideration to the residents. Mr. Caselis asked the Board if the lot split were approved, if 2 homes would be allowed on each lot. People from the neighborhood want to ensure that the Applicant does not intend to have a total of 4 homes on the parcel. The BZA was the last hope to save the neighborhood from another multiplex. Too many lots have already been converted. Children no longer have an area to play. The triplex across from his home has the entire yard covered with concrete. The area was not designed for such high density.

Mr. Caselis was also concerned that some of the properties in the neighborhood may not be zoned for a multiple units. He believed Code Enforcement may have investigated illegal conversions. One of the properties across the street from Mr. Caselis had multiple units and trailers in the rear yard. A fire broke out, probably as a result of the trailers. The fire is just one example of what can happen if applications with additional units are approved. There has also been an increase in the number of home burglaries,

and car break-ins. Violations of the Neighborhood Preservation Ordinance have increased as well. Some property owners are consistent with home upkeep. Others on the block are not. This adds to the deterioration of the entire neighborhood. Many of the original residents have moved away, due to the decline of the neighborhood. Mr. Caselis said the Board should also consider the suitability of multiple units. The area contains underground aquifers. The water table is high. In the rainy months water is just 4 to 5 feet below the surface. Mr. Caselis even has a well on his property. Staff responded that the project would be exempt from the Creek Moratorium, due to the scope of the project. Member Gil suggested that Mr. Caselis get involved with the Cherryland Association. This will allow him and other residents to review potential projects being considered in the neighborhood. Mr. Caselis thanked the Board for the opportunity to testify. He wanted to ensure that the Board knew the neighborhood's position. All of the neighbors want to maintain the integrity, and preserve the rural character of the neighborhood. Public testimony was closed.

Staff recommended a continuance to discuss the intent of the Building Department. The Vice Chair thought there were gray areas in the variance's present form. The parcel is zoned for a Two Family Residence. It appears that if the parcel was subdivided into 2 lots. Each lot would also be allowed, 2 homes. This must be clarified so the Board knows exactly what they are considering.

Member Adesanya asked staff to confirm the maximum number of units allowed on the parcel. Staff should also review the Ordinance language regarding non-conforming, expansion. Does expansion refer to the "use", or to "physical structure".

The Chair agreed that a continuance was appropriate to further research the Applicant's options. Staff should verify with the Building Department, if a subdivision is necessary. If a variance is not required, the project can move forward based on the plans that have been submitted. Perhaps staff can also facilitate a refund of the application fee.

The Vice Chair motioned to continue V-12096 to March 26, 2008. Member Gil seconded the motion. Motion carried 5/0.

STAFF COMMENTS & CORRESPONDENCE: The Minutes of February 13, 2008 will be presented at the next Meeting due to the consecutive County Holidays.

APPROVAL OF MINUTES: The Chair continued the Minutes of February 13, 2008 to the March 13, 2008 Meeting.

BOARD'S ANNOUNCEMENTS, COMMENTS AND REPORTS:

Member Clark complimented Planning Staff on the improved quality of staff reports. Reports are more informative, which makes Board Members more effective.

The Chair informed staff that she would not be present at the March 26, 2008 Meeting.

The Vice Chair asked staff to include information regarding the right to appeal any BZA decision, on the Meeting Agendas. County Counsel told the Board that she would research the appropriate language.

ADJOURNMENT: There being no further business, the hearing adjourned at 4:30 p.m.

CHRIS BAZAR - SECRETARY
WEST COUNTY BOARD OF ZONING ADJUSTMENTS