

MINUTES OF MEETING
WEST COUNTY BOARD OF ZONING ADJUSTMENTS
MARCH 9, 2005
(APPROVED MARCH 23, 2005)

FIELD TRIP: 1:30 P.M.

MEMBERS PRESENT: Member Judy Roos.

1. **SUSAN SUNG, CONDITIONAL USE PERMIT, C-8362** – Application to allow continued operation of a before and after school care program for 60 students in a P-D, ZU-1529 (Planned Development, 1529th Zoning Unit) District, located at 20001 Carson Lane, south side at the end of Kit Lane, unincorporated Castro Valley area of Alameda County, bearing Alameda County Assessor's Parcel Number: 085A-6402-028-00.
2. **ALAN CORMIER, CONDITIONAL USE PERMIT, C – 8368** – Application to allow continued operation of a kennel, training and boarding facility in a R-1-L-B-E-CSU-RV (Single Family Residence, Limited Agricultural Uses, Conditional Secondary Unit, Recreational Vehicle, Five Acre Minimum Lot Width, 30 feet Front Yard) District, located at 6776 Crow Canyon Road, west side, approximately 0.57 miles south of Norris Canyon Road, unincorporated Castro Valley area, designated Assessor's Parcel Number: 0085-1700-003-06.
3. **FELIX R. DOMINGUEZ, CONDITIONAL USE PERMIT, C - 8371** – Application to allow operation of an automobile re-upholstery shop in a TC (Transit Corridor within the Ashland Cherryland Business District Specific Plan) located at 16330 East 14th Street, northeast side, approximately 200 feet southeast of 163rd Avenue, unincorporated Ashland area of Alameda County, designated Assessor's Parcel Number: 0080-0064-017-00.
4. **GEORGINA MEEHAN / CAMELOT SCHOOL, CONDITIONAL USE PERMIT, C – 8372** – Application to allow continued operation of a private school for up to 300 students in an R-1-CSU-RV (Single Family Residence with Conditional Secondary Unit and Recreational Vehicle Regulations) District, located at 2330 Pomar Vista, unincorporated San Lorenzo area of San Lorenzo, designated Assessor's Parcel Number: 084A-0185-001-01.
5. **CROWN CASTLE INTERNATIONAL / ROBERT GUNDERMAN, CONDITIONAL USE PERMIT, C-8376** – Application to allow continued use of a wireless telecommunications facility in an "A " (Agricultural) District, located at 6390 Grassland Drive, northeast side, approximately 1200 feet southeast of Sunnyslope Avenue, unincorporated Castro Valley area of Alameda County, bearing Assessor's Parcel Number: 0411-0057-183-00.
6. **FIRST PRESBYTERIAN CHURCH, CONDITIONAL USE PERMIT, C-8377** – Application to allow continued operation of a Childcare Facility for up to 150 children in a R-S-D-20 (Suburban Residence with 2,000 square feet Minimum Building Area per Dwelling Unit) District, located at 2490 Grove Way, northwest side, approximately 172 feet northeast of Redwood Road,

unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 0416-0030-014-03.

7. **PAMELA ZELL RIGG, CONDITIONAL USE PERMIT, C-8380 -**
Application to allow continued operation of a pre-school for up to 150 children in a R-S-D-20 (Suburban Residence with 2,000 square feet Minimum Building Site Area per Dwelling Unit) District, located at 16492 Foothill Boulevard, northeast side, approximately 130 feet south east of Miramonte Avenue, unincorporated Ashland area of Alameda County, designated Assessor's Parcel Number: 080A-0204-004-06.
8. **RIDDLE / RST & ASSOCIATES, SITE DEVELOPMENT REVIEW S-1960 AND VARIANCE, V-11897 –** Application to construct 12 condominium units, three stories in height, where two stories and 25 feet are the maximum, on a 0.50 acre site in a R-S-D-20 (Suburban Residence with 2,000 square feet Minimum Building Area per Dwelling Unit) located at 156 and 164 Laurel Avenue, north side, approximately 720 feet south west of Princeton Avenue, unincorporated Cherryland area of Alameda County, designated Assessor's Parcel Number: 0429-0091-065-00.
9. **OWEN & AUTUMN MC GRATH, ET AL, VARIANCE, V-11904 -**
Application to construct three units so as to provide a ten foot rear yard where twenty feet is the minimum required in a R-S-D-20 (Suburban Residence with 2,000 square feet Minimum Building Area per Dwelling Unit) District located at 15572 Usher Street, east side, approximately 132 feet north of Lewelling Boulevard, unincorporated San Lorenzo area of Alameda County, designated Assessor's Parcel Number: 0413-0011-034-00.
10. **STEVEN & ANN MARIE MRAK, VARINACE, V-11905 –** Application to construct an attached addition so as to provide a six foot rear yard where 20 feet is the minimum required in an R-1 (Single Family Residence) District, located at 15854 Via Del Prado, east side, approximately 641 feet south of Grant Avenue, unincorporated San Lorenzo area of Alameda County, designated Assessor's Parcel Number: 0412-0025-018-00.
11. **IVAN GARCIA, VARIANCE, V-11906 –** Application to construct a conforming attached addition so as to maintain a zero foot side yard where five feet is the minimum required in a R-1 (Single Family Residence) District, located at 16125 Hesperian Boulevard, northeast side, approximately 254 feet southeast of Via Mercado, unincorporated San Lorenzo area of Alameda County, designated Assessor's Parcel Number: 0412-0039-007-00.
12. **RAYMOND & LISA MULLINS, VARIANCE, V- 11907 –** Application to construct an attached addition providing an eight foot rear yard where twenty feet is the minimum required in a R-1 (Single Family Residence) District, located at 18175 Via Arroyo, southeast side, approximately 146 feet southwest of Via Verde, unincorporated San Lorenzo area of Alameda County, designated Assessor's Parcel Number: 0413-0083-055-00.

13. **SHABINA RAFIQ & MOHAMMED I KHAN, VARIANCE, V-11909** - Application to: 1) Construct an attached addition so as to provide a ten foot, six inch rear yard where 20 feet is the minimum required; and 2) Maintain an existing garage providing a nine foot driveway where 20 feet is required in a R-S-D-20 (Suburban Residence with 2,000 square feet Minimum Building Site per Dwelling Unit) District, located at 302 Sunset Boulevard, northwest side, corner of Princeton Street, unincorporated Cherryland area of Alameda County, designated Assessor's Parcel Number:0429-0055-025-00.

14. **ANTHONY T. FURLONG, VARIANCE, V-11910** – Application to effect a boundary adjustment thereby providing a five foot side yard where ten feet is the minimum required, in a R-S-D-20 (Suburban Residence with 2,000 square feet Minimum Building Site per Dwelling Unit) District, located at 20545 and 20541 Forest Avenue, west side, approximately 767 feet north of Castro Valley Boulevard, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 084C-0724-045-00.
The meeting was held at the hour of 6:00 p.m. in the Alameda County Building, 224 West Winton Avenue, Public Hearing Room, Hayward, California.

REGULAR MEETING: 6:00 p.m.

MEMBERS PRESENT: Members Frank Peixoto, Chair; Ron Palmeri; Jewell Spalding; Lester Friedman and Judy Roos.

MEMBERS EXCUSED: None

OTHERS PRESENT: Phil Sawrey-Kubicek, Senior Planner; Yvonne Bea Grundy, Recording Secretary

There were approximately 25 people in the audience.

CALL TO ORDER:

The meeting was called to order by the Chair at 6:00 p.m.

ANNOUNCEMENTS BY THE CHAIR:

The Chair did not have an announcement.

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. **BEHZAD BARFEEL, CONDITIONAL USE PERMIT, C-7992** – Application to allow operation of an auto sales and minor service facility in the ACBDSP (Ashland Cherryland Business District Specific Plan) District, located at 21265 and 21273 Mission Blvd, southwest side, approximately 150 feet northwest of Blossom Way, unincorporated Cherryland area of Alameda County, bearing Assessor's Parcel Number: 414-0076-028-00 (Continued from May 22, 2002; January 22, March 26, and November 5, 2003; April 14, September 8 and November 10 2004; to be continued without discussion to August 24, 2005).

Member Palmeri questioned staff as to the current status of the application. The original application had been filed in 2002. Staff explained that policy was being developed for the Eden Area that may not change the zoning but will resolve issues with this and similar applications. Board Member Roos asked staff if an application could be conditionally approved for one year in the interim. The Board could reconsider the issues in 12 months time as was done with another application in the same area. Staff responded that the difference was C-7992 was a pre-existing business in operation prior to the adoption of the Specific Plan. The other application was for a new business.

2. **VILLAGE BAPTIST CHURCH / AT&T WIRELESS, CONDITIONAL USE PERMIT, C-8331** - Application to allow a new wireless telecommunications facility steeple on an existing church building with ground level equipment in a R-1 (Single Family Residence) District, located at 1535 Bockman Road, north side, at the intersection with Bandoni Avenue, unincorporated San Lorenzo area of Alameda County, bearing Assessor's Parcel Number: 0411-0057-183-00. (To be continued without discussion to March 23, 2005).
3. **RYAN GREVES, VARIANCE, V-11882** - Application to construct a detached garage located in the front half of the lot and within the Future Width Line adopted by Ordinance where not otherwise permitted and three feet from the property line where six feet is required, in a R-1-L-B-E (Single Family Residence, Limited Agriculture, 5-acre Minimum Building Site Area) District located at 6270 Crow Canyon Road, west side, 0.74 miles north of Cold Water Drive, in the unincorporated Castro Valley area of Alameda County, bearing Assessor's Parcel Number: 0085-1600-003-03. (Continued from January 12, 2005; to be continued without discussion to March 23, 2005).
4. **JOSE J. RAMON, VARIANCE, V-11902 and SITE DEVELOPMENT REVIEW, S-1965** – Application to retain two existing dwellings and to construct a new triplex so as to provide: 1) One foot and five feet between a driveway and dwelling wall 10 feet is required; 2) A 14 feet – 10 inch rear yard where 20 feet is required; and 3) To maintain an existing five foot side yard where 10 feet is required, in a R-S-D-20 (Suburban Residence with 2,000 square feet Minimum Building Site Area per Dwelling Unit), located at 299 Sunset Boulevard, southwest side, approximately 325 feet southwest of Princeton Street, unincorporated Cherryland area of Alameda County, designated Assessor's Parcel Number: 0429-0091-009-00. (Continued from February 9, 2005; to be continued without discussion to April 13, 2005).

Member Palmeri motioned to adopt the Consent Calendar as submitted. Member Friedman seconded the

motion. Motion carried 5/0.

REGULAR CALENDAR

1. **COMUNIDAD CRISTIANA CRISTO, CONDITIONAL USE PERMIT, C-8270** – Application to allow continued operation of a church facility in an R-S-D-35 (Suburban Residence, 3,500 square feet Minimum Building Site Area per Dwelling Unit) District, located at 21573 Haviland Avenue, west side, approximately 161 feet south of Grove Way, unincorporated Cherryland area of Alameda County, Assessor's Parcel Numbers: 0429-0028-081-00, 0429-0028-082-00, 0429-0028-083-00 and 0429-0028-84-00. (Continued from February 11, May 12, June 23, August 25, October 13, October 27, 2004, December 8, 2004, January 26, 2005 and February 9, 2005).

Staff Member Phil Sawrey-Kubicek reminded the Board that the application had been before them on February 11, May 12, June 23, August 25, October 13 and October 27, 2004. January 26 and February 9, 2005. The applicant contacted the planner today and informed them a sound engineer had been hired. The testing will take place on March 13, 2005 therefore they would like an additional 30 days to submit the results.

Member Palmeri asked staff why the Pre Hearing Recommendation was not denial of the application. Staff informed the Board that they anticipated receiving a sound study prior to the meeting. The staff report was written in consideration of data confirming mitigation was possible. Member Spalding commented that the application had been in progress for over one year and that the Board had been quite generous in allowing time. Unless a new study was submitted she felt the recommendation should be denial. Noise complaints had been received in 2003, and although complaints had subsided in 2004 new complaints had recently been submitted. Staff confirmed that a noise complaint from the neighbor had been received two days prior to the hearing.

The Chair asked staff what noise levels the current Noise Ordinance allowed. Staff listed Daytime Noise Level Standards from 7:00 a.m. to 10:00 p.m.:

- Category 1, states that you can not produce a sound of 50 decibels for a period of 30 minutes.
- Category 2, states 55 decibels for 15 minutes.
- Category 3, states 60 decibels for 5 minutes.
- Category 4 states, 65 decibels for 1 minute.
- Category 5, states any noise 70 or more decibels allowed for 0 minutes.

County Counsel added that the current Noise Ordinance was difficult to enforce because it differentiates sudden noise vs. long term noise, henceforth the proposed revisions. Public testimony was opened.

The neighbor of the applicant, Mr. George Reddy testified that he often complained about noise at the church but the sheriff's department says nothing can be done since an application is in progress. The noise levels are especially high between 12 noon, 2 p.m. and after church services. This past Sunday someone from the church was conducting a sound survey. At one point the Minister and another individual came onto his property about 2:20 p.m., took a measurement and showed him a sound meter reading of over 60 decibels.

A representative of Comunidad Cristiana Cristo's, Mr. Miguel Valazquez introduced himself. He said at one point the application had been delayed because the church was waiting for assistance from planning to conduct the sound study after it was determined that the initial study the church conducted was not

sufficient. The process was further delayed when it was determine that it was not possible for Alameda County Environmental Health to assist, an engineer was hired. Mr. Valazquez presented a letter to the Board confirming that the engineer will conduct the study Sunday, March 20, 2005. Choir practices on Wednesdays do not generate as much noise as a Sunday Service, however the sound engineer will take measurements of all church activities. He added that the overall noise level will drop once the building repairs are completed which include soundproofing. The individual conducting preliminary sound tests on March 5, 2005 was Shawn Ellis a member of Glad Tidings Church. He is not a professional sound engineer but a friend of a parishioner. Public testimony was closed.

The Boards concerns were the following:

Member Spalding said the application had been ongoing for more than 12 months. The sound study, re-striping of the parking lot and re-construction, including the roof and handicapped ramp had not yet begun. The current situation left the neighbors without remedy concerning noise complaints. The community was waiting and the slow progress did not instill confidence that the applicant could complete the project within a few months. If the sound study results prove the noise cannot be mitigated it will still take additional time to pursue Code Enforcement action, up to and including revocation. She continued and said that the parking Variance had not been addressed, 38 spaces were required and only 24 were indicated.

Member Palmeri stated the difficulty was that the Permit had expired in 1997 and the applicant did not apply for renewal until one year ago. At the present time there was still no method to determine if the applicant's proposed mitigation measures would be effective. The applicant was given additional time for a sound study which still has not been conducted. This was indicative of the lack of progress thus far and he thought the Board would be remiss if the application was not denied. Member Roos felt that the report did not discuss the driveway etc. in sufficient detail and lacked exact methods as to how sound would be altered and/or mitigated. The Chair pointed out that no start date for construction was indicated. Staff clarified that the parking thresholds from the prior variance would be maintained since the applicant was not increasing the number of benches in largest assembly room. The most recent 30 day extension the Board granted the applicant to hire a sound engineer was at the February 9, 2005 Hearing.

Member Roos motioned to deny the application. Tentative Finding #2 shall reflect in the negative and shall read as stated in the December 8, 2004 staff report. The church is located in a mix of residential uses and the noise from the church use is causing complaints. Finding #3 shall read in the affirmative as stated in the December 8, 2004 staff report. The use will adversely affect the health and/or safety of persons in the surrounding area due to the fact that the noise from the church's services affects the surrounding neighbors.

Member Spalding asked to amend the motion to supplement Finding #3 specifying, closed door and/or windows are not sufficient noise mitigation measures. Member Roos accepted the amendment. Member Palmeri seconded the motion. Motion carried 5/0.

2. **CROWN CASTLE INTERNATIONAL / ROBERT GUNDERMAN, CONDITIONAL USE PERMIT, C-8376** – Application to allow continued use of a wireless telecommunications facility in an "A" (Agricultural) District, located at 6390 Grassland Drive, northeast side, approximately 1200 feet southeast of Sunnyslope Avenue, unincorporated Castro Valley area of Alameda County, bearing Assessor's Parcel Number: 0411-0057-183-00.

Staff recommended approval of the application. Board Member Roos asked for clarification as to the

name of the applicant. Staff explained that Crown Castle Communications processes applications for Verizon Wireless. Lin and Billalon were the last names of the property owners. Member Friedman asked staff why co-location was not allowed under Pre Hearing Recommendation, Condition #10. Staff clarified that was in error. Co-location of other wireless companies will be allowed. Public testimony was opened. No public testimony was offered. Public testimony was closed.

Member Palmeri motioned to adopt the staff finding of approval with a modification to Pre Hearing Recommendation, Condition #10 which shall read in the affirmative. Co-location of other wireless companies shall be allowed. The permit shall expire on November 5, 2013 to coincide with the expiration of Conditional Use Permit, C-8192 which is also located on the property. Member Roos seconded the motion. Motion carried 5/0.

3. **CESAR CERVANTES, VARIANCE, V-11867** – Application to allow retention of three existing dwellings and construction of seven new apartment units providing 15 foot rear yard where 20 feet is required, five foot from driveway to residential wall where 10 feet is required, in a R-S-D-20 (Suburban Residence, 2,000 square feet Minimum Building Site Area per Dwelling Unit) District, located at 16024 and 16030 Marcella Street, southeast side, approximately 858 feet southeast of 159th Avenue, unincorporated Ashland area of Alameda County, bearing Assessor's Parcel Number: 0080-0051-048-03. (Continued from September 22, October 13 and November 10, 2004, January 26, February 9 and February 23, 2005).

The staff recommendation was to continue the application to the March 23, 2005 meeting. The applicant is working with staff to produce a project that will not require a variance. The applicant will likely withdraw the application. Member Roos asked staff to obtain written verification from the application. Staff confirmed that verification would be obtained prior to the March 23, 2005 hearing date. Public testimony was opened. No public testimony was offered. Public testimony was closed.

Member Friedman motioned to continue the application to March 23, 2005. Member Spalding seconded the motion. Motion carried 5/0.

4. **PATRICK LOVE, VARIANCE, VARIANCE, V-11899**- Application to retain a converted garage so as to locate one required on-site parking space partially in the required front yard where not otherwise permitted in a R-1-CSU-RV (Single Family Residence with Secondary Unit and Recreational Vehicle) District, located at 3773 Cottage Court, north side, approximately 284 west of Parsons Avenue, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 084D-1329-017-00. (Continued from January 26 and February 23, 2005).

Staff announced that the applicant made contact today to request a one month continuance. They believe the project can be modified, eliminating the need for a Variance. Public testimony was opened. The applicant, Patrick Love asked the Board for time to review the recent staff report with his architect. He had just received the material two days prior to the hearing and needed additional time.

Public testimony was closed. Member Roos asked that photographs also be submitted to the Board at the next hearing. Member Roos motioned to continue the application to the April 13, 2005 hearing. Member Friedman seconded the motion. Motion carried 5/0.

5. **OWEN & AUTUMN MC GRATH, ET AL, VARIANCE, V-11904 -**

Application to construct three units so as to provide a ten foot rear yard where twenty feet is the minimum required in a R-S-D-20 (Suburban Residence with 2,000 square feet Minimum Building Area per Dwelling Unit) District located at 15572 Usher Street, east side, approximately 132 feet north of Lewelling Boulevard, unincorporated San Lorenzo area of Alameda County, designated Assessor's Parcel Number: 0413-0011-034-00.

Staff recommended approval of the application. Member Roos asked what Alameda County Traffic Division recommended in regard to the application. Their recommendation was a lighting plan for the pedestrian walkway; a walkway added to the perimeter of the property; and increased maneuverability in the parking spaces.

Board questions for staff were as following:

- Is the parking lot on the property and lots surrounding properties empty or full.
- How much space is allowed in the rear near the set back line.
- Where is the open space on the parcel was located.
- Which direction does the proposed parking face.
- Will the corrugated metal accessory structure on the property remain.
- What are the proposed fence heights.
- The location of all landscaping.

Staff reported that the parking lot on the parcel was currently empty however surrounding lots were filled. A home formerly existed on the property but the structure had burned down. The Zoning for the parcel is R-S-D-20 (Suburban Residence, 2,000 square feet Minimum Building Site per Dwelling Unit) which allows multiple units. There have been projects completed in the area with similar density. A project with PD zoning, located just north of application was completed three years ago with 9 units. A fifteen unit, PD was developed in 1995 at 15448 & 15558 Usher Street with side yard variances. There are also much older developments with multiple detached units in the area.

On the subject property open space is located in the rear of the lot, also in front near the walkway area. The applicant is proposing a 10 foot open space area surrounding the perimeter of the property. Parking is located in the rear. Zoning requirements do not allow parking within the required yard and this portion of the lot can accommodate the spaces. The area faces another property with multiple units. The property line fence height will be 6 feet. Landscaping will include flowering pear and myrtle trees on the property line and shrubbery and bushes on the left property line. Public testimony was opened. The applicant, Owen Mc Grath spoke and pointed out an error in the graphics submitted to the Board. He submitted additional photographs and clarified that the actual lot location. The corrugated structure is actually located on an adjacent property. Public testimony was closed.

Member Friedman motioned to conditionally approve the application. Member Palmeri seconded the motion with the modification of Pre-Hearing Recommendation, Condition #1 to include a Landscaping Plan as part of Exhibit A. Motion carried 5/0.

6. **STEVEN & ANN MARIE MRAK, VARIANCE, V-11905 -** Application to construct an attached addition so as to provide a six foot rear yard where 20 feet is the minimum required in an R-1 (Single Family Residence) District, located at 15854 Via Del Prado, east side, approximately 641 feet south of Grant Avenue,

unincorporated San Lorenzo area of Alameda County, designated Assessor's Parcel Number: 0412-0025-018-00.

Staff recommendation was conditional approval of the application. Member Palmeri was concerned that if the Board approved the application how possible future additions could be limited to a minimum 6 foot rear setback. Staff clarified that Pre Hearing Recommendation, Condition #1; authorizes the construction of a one-story attached addition to an existing single-family house providing a 6-foot rear yard, with the requirement that any future addition must retain a minimum of 296 square feet of compensating open space. Any new construction that encroached within 10 feet of the existing structure would require a variance.

Public testimony was opened. The applicant was present but declined to speak. A neighbor, Mr. Jim Antulik spoke. He said that he could understand why the applicant wanted to expand but felt the addition would obstruct his view from his bedroom window. Photographs were submitted to the Board to show the perspective from his home next door. Public testimony was closed.

Staff clarified that although the neighbor felt that the front portion of the addition which encloses the front porch blocked his view, a variance was not required. That portion of the addition was stepped back in different places and was not before the Board.

Member Palmeri motioned to approve the application subject to the modification of Pre Hearing Recommendation, Condition #1 to limit any addition to the maximum of a single story as set forth in plans marked, Exhibit A. Member Spalding seconded the motion. Motion carried 5/0.

7. **IVAN GARCIA, VARIANCE, V-11906** – Application to construct a conforming attached addition so as to maintain a zero foot side yard where five feet is the minimum required in a R-1 (Single Family Residence) District, located at 16125 Hesperian Boulevard, northeast side, approximately 254 feet southeast of Via Mercado, unincorporated San Lorenzo area of Alameda County, designated Assessor's Parcel Number: 0412-0039-007-00.

The staff recommendation was conditional approval.

The Board had the following concerns and questions:

- Are there any alternatives to a zero foot side yard.
- How to prevent the future potential for the space becoming a second unit.
- Would the elimination of the exterior entry door design affect ingress and egress in the event of fire or emergency.

Staff explained that the non-conformity was created in 1951 prior to the initial zoning of the area with a valid building permit. The addition of a second story over the covered patio would not worsen the condition of the building's non conforming status. A Limitation of Use could be recorded on title of the property. This would prevent use a secondary unit if the property were sold. The stipulation will be added as a condition of approval. Public testimony was opened. The applicant, Ivan Garcia was present. He purchased the home seven years ago. He would like to add a bathroom to the home and retain the design of the exterior door. If that is not possible he would alter the design. Staff reviewed plans of the design. One door was to the exterior and the other an interior door that leads through the kitchen and up an interior stairway. The elimination of an exterior entry should not cause problems in an emergency.

Member Spalding suggested the exterior door be converted to a window. Public testimony was closed.

Member Roos motioned to uphold the staff recommendation of approval. Pre-Hearing Recommendation, Condition #1 shall be modified to state that the exterior door shall be replaced with a window and Exhibit A shall be amended to reflect as such. Member Friedman seconded the motion. Member Palmeri was not in favor of approval of the application. Motion passed 4/1.

8. **RAYMOND & LISA MULLINS, VARIANCE, V- 11907** – Application to construct an attached addition providing an eight foot rear yard where twenty feet is the minimum required in a R-1 (Single Family Residence) District, located at 18175 Via Arroyo, southeast side, approximately 146 feet southwest of Via Verde, unincorporated San Lorenzo area of Alameda County, designated Assessor's Parcel Number: 0413-0083-055-00.

Staff recommended approval of the application. The San Lorenzo Village Homes Association also recommended approval. Their Codes Covenants and Restrictions only require a five foot rear yard setback. Public testimony was opened. The applicant was present but declined to comment. Public testimony was closed. Member Palmeri motioned to uphold staff's recommendation of approval. Member Spalding seconded the motion. Motion approved 5/0.

9. **SHABINA RAFIQ & MOHAMMED I. KHAN, VARIANCE, V-11909** - Application to: 1) Construct an attached addition so as to provide a ten foot, six inch rear yard where 20 feet is the minimum required; 2) Maintain an existing garage providing a nine foot driveway where 20 feet is required in a R-S-D-20 (Suburban Residence with 2,000 square feet Minimum Building Site per Dwelling Unit) District, located at 302 Sunset Boulevard, northwest side, corner of Princeton Street, unincorporated Cherryland area of Alameda County, designated Assessor's Parcel Number: 0429-0055-025-00.

Staff recommendation was denial of the application. The Cherryland Community Association declined to endorse the application. It did not meet their requirement of a 20 foot rear yard and a 16 foot minimum driveway. Public testimony was opened.

The applicant, Mr. Mohammed Kahn was present and had obtained a petition containing neighbor's signatures in favor of the proposed addition. He had two reasons for attaching the proposed addition to the existing garage at the rear of the parcel. There is a four way stop sign in the front of the home on Sunset Boulevard and Princeton Street. A traffic accident occurred which resulted in a vehicle running into and damaging the front fence. A police report was included with the application. One of the home's bedrooms faces Princeton Street, and they did not feel safe leaving their child in the room. Mrs. Shabina Rafiq said by attaching the addition to the existing garage an additional bedroom would be created.

It would allow access to the house directly from the garage. She felt that would add a measure of safety, especially in the winter months when the sun set early. Erica Campisi from the Cherryland Community Association introduced herself. The Cherryland Association opposed the application. They wanted to remain consistent with their requirement of 20 foot rear yard setbacks and a 16 feet minimum driveway. Public testimony was closed.

The Board had the following questions:

- If the addition were not attached to the garage would a variance be required.

- Were alternate design options available, i.e., a second story, strategic landscaping or fencing.
- Would a safety issue be considered a special circumstance.
- Would the Special Building Line be considered a special circumstance.

Staff said any construction that encroached into the 20 foot rear yard set back or allowed less than six feet between the garage and house would require a variance. The driveway apron is required to be 20 feet. The Chair did not feel the 2003 traffic accident was germane to the application. Member Spalding disagreed and thought safety was an issue. Member Palmeri stated that if safety was indeed an issue, attaching an addition to the garage did not resolve it. Many homes in the surrounding areas of Cherryland, Fairview and the entire East Bay were similar in size and had the same issues. If the rear yard were eliminated the only remaining open area would be in the front yard. A fence with posts might be an effective mitigation measure. The applicant interjected and said they had a metal, chain link fence but the car went through it during the accident. Staff interjected and said regardless of the material a fence must comply with zoning height requirements. The Special Building Line was established in late 1950's and early 1960's to all streets in the County that might possibly be widened in the future. The home was built before the Special Building Line went into affect. County Counsel stated that the home was non-conforming, however if the County decided to widen the road the home would not be exempt from eminent domain.

Member Palmeri motioned to adopt the staff finding of denial. Tentative Finding, #2 shall be modified to reflect in the affirmative. Finding #3 shall omit the word possibly and substitute yes. Member Friedman seconded the motion. Motion carried 5/0.

APPROVAL OF MINUTES:

Member Roos motioned to approve the Minutes of February 9, 2005 with submitted corrections. Member Palmeri seconded the motion. Motion carried 4/0/1. The Chair abstained.

Member Roos motioned to approve the Minutes of February 23, 2005 with submitted corrections. Member Palmeri seconded the motion. Motion carried 3/0/2. Members Spalding and Friedman abstained.

STAFF COMMENTS & CORRESPONDENCE:

Many new applications had been submitted and upcoming future agendas would be full.

CHAIR'S REPORT:

No Chair's Report was submitted.

BOARD'S ANNOUNCEMENTS, COMMENTS AND REPORTS:

Member Roos asked for a list of Variances that had been appealed to the Board of Supervisors and what the final determinations were. The Board of Zoning Adjustments could then track which of their decisions were upheld, and measure how consistent their decisions were with the Board of Supervisors.

Member Roos asked County Counsel if a density bonus could be combined with low income housing requirement. County Counsel commented that a concept that combined density with an income requirement seemed to be reasonable and appropriate.

Member Spalding commented that the delay of graphics and photographs affected their ability to determine what structures currently existed and to gain a complete perspective of an application. In the future every staff report should include graphics.

ADJOURNMENT:

There being no further business, the hearing adjourned at 7:55p.m.

CHRIS BAZAR - SECRETARY
WEST COUNTY BOARD OF ZONING ADJUSTMENTS