

Minutes of Meeting
West County Board of Zoning Adjustments
Wednesday, May 10, 2006
(Approved May 24, 2006)

Field Trip: 1:00 p.m.

MEMBERS PRESENT: Members Frank Peixoto, Chair.

MEMBERS EXCUSED: Ron Palmeri; Jewell Spalding and Lester Friedman.

OTHERS PRESENT: Phil Sawrey-Kubicek, Senior Planner

FIELD TRIP: The meeting adjourned to the field and the following property was visited:

1. **T MOBILE USA, CONDITIONAL USE PERMIT, C-8487** – Application to allow continued use of a wireless communications facility (Cell Site), in an “A” (Agricultural) District, located at 6390 Grassland Drive, north east side, approximately, 1,200 feet south east of Sunnyslope Avenue, unincorporated Castro Valley area of Alameda County, designated Assessor’s Parcel Number: 085A-1400-001-10.
2. **JAVIER PENA, CONDITIONAL USE PERMIT, C-8499** – Application to allow the operation of an alcohol outlet in conjunction with a supermarket (El Rancho Supermercado) in a C-N (Neighborhood Business) District, located at 22291 Redwood Road, west side corner, north of Grove Way, unincorporated Castro Valley area of Alameda County, designated Assessor’s Parcel Number: 415-0100-054-00.
3. **CARLOS FUENTES-NAJARRO, VARIANCE, V-11992** – Application to retain an existing secondary unit, providing a five foot rear yard where 20 feet is required in an R-S-SU (Suburban Residence, Secondary Unit) District, located at 234 Cherry Way, north side, approximately 550 feet east of Meekland Avenue, unincorporated Cherryland area of Alameda County, designated Assessor’s Parcel Number: 429-0010-071-00.
4. **FOREST CIRCLE / LLC, VARIANCE, V-11993** – Application to allow construction of a new detached secondary unit two stories, 26 feet in height where one story and 15 feet in height are the maximum; and providing a three foot, six inch side and rear yard where six feet and 20 feet are required; and three parking spaces where four are required, in an R-S-D-20 (Suburban Residence, 2,000 square feet per Dwelling Unit) District, located at 20554 Forest Avenue, east side, approximately 350 feet north of Vincent Court, unincorporated Castro Valley area of Alameda County, designated Assessor’s Parcel Number: 084C-0713-012-01.
5. **DHALIWAL/ROBLES, VARIANCE, V- 11995** – Application to construct a second dwelling providing a 10 foot driveway where 12 feet is the minimum required; and a zero foot setback between a driveway and dwelling wall in an R-S-D-35 (Suburban Residence, 3,500 square foot Minimum Building Site Area per Dwelling , located at 167 Blossom Way, south side, approximately, 300 feet east of Meekland Avenue, unincorporated Cherryland area of Alameda County, designated Assessor’s Parcel Number: 429-0032-017-00. (Continued from April 12, 2006).
6. **DEL RIO/GOMES, VARIANCE- V-12000** – Application to construct an attached addition (garage) providing a six foot side yard where 15 feet is the minimum, in an R-1-L-B-E-CSU-RV (Single Family Residence, Limited Agricultural Uses, 5 Acre Minimum Building Site Area, Secondary Unit, Recreational Vehicle) District, located at 8216 Crow Canyon Road,

west side, approximately ¼ mile, north of Norris Canyon Road, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 085-1750-005-22.

7. **ACRO ELECTRIC, VARIANCE, V-12001** – Application to install a detached accessory structure in the front half of the lot, twenty feet from the front property line where otherwise permitted in the back half of the lot, or 75 feet back, in an R-1-L-B-E (Single Family Residence, Limited Agricultural Uses are permitted, 5 Acre Minimum Building Site Area) District, located at 6161 East Castro Valley Boulevard, south side, approximately, 250 feet west of Palo Verde Road, unincorporated Castro valley area of Alameda County, designated Assessor's Parcel Number: 085A-0550-013-01.

8. **GURDEEP MAHAL, VARIANCE, V-12010** – Application to construct a single family dwelling 30 feet in height where 25 feet is the maximum allowed in a P-D ZU-1451 (Planned Development, 1451st Zoning Unit) District, located at 2850 Eugene Terrace, north east side, approximately 300 feet northwest of Carlton Avenue, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 084B-0405-030-00.

Regular Meeting: 6:00 p.m.

MEMBERS PRESENT: Members Frank Peixoto, Chair, Ron Palmeri, Jewel Spalding, Dawn Clark and Lester Friedman.

OTHERS PRESENT: Phil Sawrey-Kubicek, Senior Planner

A. Call to Order/Roll Call

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

B. Neighborhood Preservation and Zoning Ordinance Abatement Hearings

No items were presented.

C. 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.

D. Consent Calendar

1. **JERRY REILLY/WEST WINTON AVE. LLC, VARIANCE, V-11980** - Application to allow 1) one site with 3,948 square feet as a building site which is less than the minimum 5,000 square feet required; and 2) allow an addition above the garage with a zero foot front yard setback where 20 feet is required, in an R-1 (Single Family Residence) District, located at 14643 Saturn Drive, west side, approximately 600 feet south of Joan Drive, unincorporated Ashland area of Alameda County, designated Assessor's Parcel Numbers: 079-0006-033-02 and 079-0006-032-02 (Continued from February 22, March 22 and April 12, 2006; to be continued without discussion to June 28, 2006).

Member Palmeri motioned to accept the Consent Calendar as submitted. Member Friedman seconded the motion. Motion carried 5/0.

E. Regular Calendar

1. **4000 AUTO WRECKERS, CONDITIONAL USE PERMIT, C-8419** – Application to allow continued operation of an auto dismantling yard, in an M-2-B-E (Heavy Industrial, 5 acre

Minimum Building Site Area) District, located at 3810 Depot Road, south side, approximately 0.75 miles west of Clawiter Road, unincorporated Eden area of Alameda County, designated Assessor's Parcel Number: 0439-0070-008-06. (Continued from April 12, 2006).

Staff recommended continuation of this item to August 9, 2006 to allow the applicant to obtain the required building and fire permits for this project.

Mr. Tom Spinardi, owner of the property, asked to speak. The Chair stated that the board can't hear the item unless the required permits are in place. The owner stated that he did not understand why the County is now asking for building permits on the existing buildings on the property. He felt that they should be grandfathered because they have been on the property since 1991. Discussion ensued between the owner of the property and board members on the possibility of the City of Hayward annexing the property and what their requirements will be for this business. Board members explained to Mr. Spinardi that the only requirements they are concerned with is the County's requirements. Anything having to do with the City of Hayward he would have to contact and inquire the City. The Chair instructed Mr. Spinardi to comply with the Fire and Building requirements before appearing before this Board.

Mr. Spinardi asked for an extension of the 90 days. The Chair stated that the 90 days should be sufficient time to take care of the required permits. The owner agreed.

Member Palmeri motioned to continue the item for 90 days to August 9, 2006 in order to allow the applicant to comply with Fire and Building requirements. Member Spalding seconded. Motion carried 5/0.

2. **FOREST CIRCLE / LLC, VARIANCE, V-11993** – Application to allow construction of a new detached secondary unit two stories, 26 feet in height where one story and 15 feet in height are the maximum; and providing a three foot, six inch side and rear yard where six feet and 20 feet are required; and three parking spaces where four are required, in an R-S-D-20 (Suburban Residence, 2,000 square feet per Dwelling Unit) District, located at 20554 Forest Avenue, east side, approximately 350 feet north of Vincent Court, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 084C-0713-012-01.

The Chair continued this item to June 14, 2006. Member Spalding motioned to continue this item to June 14, 2006 to allow CVMAC to hear this item. Mr. Palmeri seconded. Motion carried 5/0.

3. **DONOVAN MC KEEVER, VARIANCE, V-11998** – Application to construct an attached addition and a secondary dwelling unit providing a three foot, two inch side yard where six feet is required; and two parking spaces where three parking spaces are required in an R-1-CSU-RV (Single Family Residence, Secondary Unit, Recreational Vehicle) District, located at 19349 Santa Maria Avenue, west side, approximately 300 feet south of Lux Avenue, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 084B-0570-125-03. (Continued from April 26, 2006).

Staff presented the staff report. Mr. Sawrey-Kubicek stated that this board had requested that staff contact County Counsel to inquire about the possibility of approval for this application. Staff did evaluate this property in terms of special circumstances and has found no special circumstance that prohibits this applicant from developing the property in the same way as his neighbors. Because the property has the same features and is even wider than many of its neighbors, granting this variance would constitute a granting of special privileges. County Counsel stated that approval of this application would set a precedent for future applications and will force the board to deviate from the ordinance code. The Board has discretion but it needs to be consistent.

Member Spalding argued that they have three independent and accessible parking spaces which satisfies the parking requirement. Member Palmeri asked if the Board can put a time limit on a variance. County Counsel answered no.

Mrs. McKeever spoke in favor of the application and stated that the alternative to change her plans and cover her backyard with the parking spaces is absurd because it would not leave much open space for her children. She asked if a handicap parking space in front of her house, on the street, would qualify as the third parking space. County staff said no and that all required parking has to be on site.

Member Spalding argued that the applicant proposal does provide three indepent accessible parking spaces and that these are special circumstances. Member Friedman asked if Member Spalding is saying that disability is a special circumstance.

Member Palmeri stated that he is concerned with voting to approve this application as it might create a precedent for future applications. Member Clark asked if the design could be changed to accommodate the parking. County staff answered yes, but parking can't be located in the front yard.

The Chair asked for a motion. Member Spalding moved to approve the application. Member Friedman seconded the motion. The Chair, Members Palmeri, and Clark voted against the motion. Motion did not pass 3/2.

Member Spalding advised the applicant to appeal to the Board of Supervisors.

4. **ACRO ELECTRIC, VARIANCE, V-12001** – Application to install a detached accessory structure in the front half of the lot, twenty feet from the front property line where otherwise permitted in the back half of the lot, or 75 feet back, in an R-1-L-B-E (Single Family Residence, Limited Agricultural Uses are permitted, 5 Acre Minimum Building Site Area) District, located at 6161 East Castro Valley Boulevard, south side, approximately, 250 feet west of Palo Verde Road, unincorporated Castro valley area of Alameda County, designated Assessor's Parcel Number: 085A-0550-013-01.

Staff presented the staff report. Member Palmeri questioned the proposed findings of the staff report. County Counsel stated that Government Code Section 65850.5 c states that the County may not deny a permit to install a solar energy system unless it makes findings with substantial evidence that there will be an adverse public health or safety and there is not feasible method to mitigate. He also said that Government Code Section 65850.5 b states that County shall administratively approve applications to install solar energy systems. Member Palmeri asked if the board only has to make two findings. County Counsel answered yes. Member Palmeri asked why approve the variance if they only need an administrative approval. County Counsel said that staff could have chosen other paths for this project but chose to have it heard by this board. Discussion ensued on staff report and wording on page 2 describing the need for a "use permit". County Counsel stated that it should have said variance.

The applicant stated that this County was by far the toughest county to deal with in regards to solar installation. He stated that he felt this was the right thing to do for his business. The location of the panels will be hidden from public view. It saves electricity and he hopes that this process will help future applicants who choose to install solar panels as a method of helping the environment.

Member Palmeri moved to approve the application. Member Spalding seconded and commended the applicant for his efforts and tenacity in getting his application through. Motion passed 5/0.

- F. Election of Officers
- G. Approval of Minutes – March 8 and March 22.

The Chair stated that minutes for March 8, 2006 had already been approved and asked that the approval of minutes from March 22, 2006 be moved to the next meeting. Member Friedman asked for several changes and that staff listen to the recording to confirm that motions were accurately recorded.

Member Friedman moved to continue the approval of the minutes to May 24, 2006. Member Palmeri seconded. Motion passed 5/0.

H. Staff Comments & Correspondence

County staff asked board members if they would prefer to hear an SDR application along with the variance application. He stated that the application he is referring to, the site development review will not be ready for another month but the variance is ready to go. Board members discussed the issue and opted to hear the variance by itself.

I. Board Announcements, Comments & Reports

Member Spalding shared with other members a memo from Supervisor Miley's office in regards to the reappointment of a couple of the members on the board. She stated that Supervisor Miley advised her that the appointments will take a few weeks to finalize but that in the meantime the board members may continue serving on the board. Member Peixoto stated that he was appointed to another four years on this board.

Member Palmeri inquired county staff in regards to applications for variances that come before this board and are denied and if the same applicant can apply for a parcel map for a subdivision approval superceding the variance application. Mr. Sawrey-Kubicek stated that the decision does not supercede the variance application.

County staff asked for nominations of Chair and Vice Chair. Member Friedman moved to nominate Member Palmeri as the Chair. Member Spalding seconded the motion. Motion passed 5/0.

Member Palmeri moved to nominate Member Peixoto Vice-Chair. Member Friedman seconded. Motion passed 4/0. Member Spalding abstained.

J. Adjournment – The meeting adjourned at 7:11 p.m.

**NEXT WEST COUNTY BOARD OF ZONING ADJUSTMENT HEARING
WEDNESDAY, MAY 24, 2006**