

MINUTES OF MEETING
WEST COUNTY BOARD OF ZONING ADJUSTMENTS
MAY 25, 2005
(APPROVED AUGUST 10, 2005)

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

REGULAR MEETING: 1:30 p.m.

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

MEMBERS EXCUSED: Jewell Spalding.

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

There were approximately 90 people in the audience.

CALL TO ORDER:

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

ANNOUNCEMENTS BY THE CHAIR:

The Chair had no announcements.

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. **CARLOS RUANO, CONDITIONAL USE PERMIT, C-8401** – Application to remodel an existing dwelling by construction of an attached addition in a C-1 (Retail Business) District, located at 16990 Westerman Court, southwest side, approximately 75 feet northwest of East Lewelling Boulevard, unincorporated Cherryland area of Alameda County, designated Assessor's Parcel Number: 0414-0001-002-02. (Continued from May 11, 2005; to be continued without discussion to June 22, 2005).

2. **CHRISTOPHER and CHRISTY SCOTT, VARIANCE, V-11892** – Application to retain a roof tent (detached accessory structure) over an existing swimming pool covering 93% (866 square feet) of the required rear yard where 30% (280 square feet) is the maximum allowed with a height of 15 foot – five inches where 15 feet is the maximum allowed, in a R-1 (Single Family Residence) District, located at 1627 Via Sarita, north side, approximately 73 feet west of Via La Jolla, unincorporated San Lorenzo area of Alameda County, designated Assessor's Parcel Number: 0411-0087-195-00. (Continued from January 26, 2005; to be continued without discussion to July 27,

2005).

Staff announced that the applicant's availability was limited due to his work schedule. Staff proposed the item be heard at 5:00 p.m. prior to the June 8, 2005 Regular Meeting. The Board agreed.

3. **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 feet west of Parsons Avenue, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 084D-1329-017-00. (Continued from January 26, February 23, March 9, and April 13, 2005; to be continued without discussion to June 8, 2005).
4. **ANTHONY GALLARDO, VARIANCE, V-11916** – Application to construct a detached addition located four feet from the main building where six feet is required in a PD (Planned Development) District, located at 17000 Columbia Drive, northeast side, approximately 56 feet northeast of Castlebrook Drive, unincorporated, Castro Valley area of Alameda County, designated Assessor's Parcel Number: 0085-6313-068-00. (To be continued without discussion to June 8, 2005).
5. **JEFF and JULIE DE LIMA, VARIANCE, V-11917** – Application for: 1) building site status on a parcel without an approved frontage in order to construct a single family dwelling 28 feet – six inches in height where a 20 a 20 foot yard is required; 2) a secondary dwelling two stories and 20 feet in height, and 1,250 square feet in area, where one story and 15 feet in height, and 640 square feet in area, are the maximum allowed, and built on a slope greater than 30% where not allowed by the specific plan in an R-1-B-40-CSU-RV (Single Family Residence, 40,000 square foot Minimum Lot Size, 30 foot front yard, 20 foot side yard, Secondary Unit, Recreational Vehicle) District, located at 17760 Madison Avenue, east side, approximately 530 feet south of Common Road, unincorporated, Castro Valley area of Alameda County, and designated Assessor's Parcel Number: 084C-0910-005-07. To be continued without discussion to July 13, 2005).

Four persons submitted Request to Speak Cards for Variance, V-11917. The Chair informed them that if they wished to provide testimony the item would be placed at the end of the Regular Calendar. No one wished to stay. The Chair confirmed that the item would be heard at the July 13, 2005 Meeting.

Member Palmeri motioned to accept the Consent Calendar. Member Friedman seconded the motion. Motion carried 4/0.

REGULAR CALENDAR

1. **GREG BROTHERS / MANILA CHURCH, CONDITIONAL USE PERMT, C-8145 & BOUNDARY ADJUSTMENT BA-02-04** – To realign three existing lots in order to build a new assembly hall for the Plymouth Brethren IV Church and to temporarily place a portable building on the site to hold meetings while the new meeting hall is being constructed, in a R-1-SU-RV (Single Family Residence, Secondary Unit and Recreational Vehicle) District, located at 4035 Seven Hills Road, south side, approximately 180 feet east of Parsons Avenue, unincorporated Castro Valley area of Alameda County, designated County Assessor's Parcel Numbers: 084D-1342-038-00, 084D-1342-004-00 and 084D-1342-005-00.

Staff Planner Ronald Gee brought the Board up to date on the activity regarding the application thus far. The application was heard at the Castro Valley Municipal Advisory Meeting. The MAC voted 3/2 at the May 23, 2005 Meeting with one member excused, to approve the application. Comments have been received regarding the application concerning traffic and the lack of more specific details. The Environmental Impact Report will address the issues. Alameda County Environmental Health found that no wildlife will be impacted on the proposed site. Changes have also been made to the site development review plan.

Public testimony was opened. Mr. Ken Holt, the representative for Bay Gospel Halls, asked the Board for approval to build a church at 4035 Seven Hills Road. He realizes there have been issues raised by the surrounding community thus far but the church would like to ensure that everything will be resolved. Dave Sadava a representative from their sister church in Los Angeles was also present to answer questions. The Southern California branch had just gone through the same process. Locally the church has hired Krone Engineers and Consultant, Ineda Adesanya to see the project through.

The Board asked Mrs. Adesanya the following questions:

- What are the proposed hours of the church; complaints have been received about possible noise
- Will the portables be used for service prior to the completion of the assembly hall
- Will the portables remain on the site permanently
- What is the time frame to complete the project
- What kind of services will be held at the facility
- Will special events, i.e., weddings and funerals be held at the facility
- How many homes are on the property(s) and who occupies them
- What denomination is the church
- What is the actual number of church members that reside in Castro Valley
- Are non church members allowed to attend services
- What are the details regarding community outreach
- How did the church contact the neighbors to discuss the project
- What are the details regarding the allegations of discrimination
- Will the EIR be amended, and if so when

Mr. Holt said that service starts at 6:00 a.m. on Sunday. Not many people attend the early service. Bible study takes place at 9:30 a.m. followed by preaching which lasts 60 to 90 minutes. An afternoon service is held at 4:30 p.m. Monday there is a prayer meeting. Tuesday a prophetic bible reading, Wednesday and Thursday night is bible study. There is also a bible study on Friday morning.

The church has an outreach. Preaching is done on the street. They do not have missionaries but anyone who expresses interest in their life style is welcome to attend a service where they find out more about the Brethren's way of life. They do have visitors from around the world who attend bible readings on an

invitational basis. Most of the events are hosted at member's homes. Weddings and funerals will take place, however the number of participants would never exceed the available space in the parking lot etc. They are simple events that would not cause commotion. There are 67 total congregants, 37 live in Castro Valley. Out of the three homes on the site, one will be demolished. Permits have already been obtained. The second will be used as a parsonage. The third sold to members who will live on site.

Mrs. Adesanya said names were obtained from the Alameda County Tax Assessor's Office. Everyone within a 300 foot radius was notified. Only four letters were returned. Somehow, apparently there was one African American woman who did not receive a notice. Mrs. Adesanya said that she was responsible for the mailing, and not the church. Thus far they met with neighbors on November 3, 2004 and May 8, 2005 to resolve issues. Eight neighborhood representatives from five households attended. Drainage, traffic and visual concerns were discussed.

A speaker, Darlene Fresno who resides at 4004 Castro Valley Boulevard said her property is next door. It sits six feet below the church. She has spent \$32,000.00 on drainage for her home. Most people in the neighborhood oppose the church. A petition with 107 names opposing the project has been compiled. Many people could not attend the meetings, including home-bound seniors. The location is at the end of a cul-de-sac. The neighborhood is tranquil and has deer. Neighbors like the atmosphere and have concerns vehicular traffic and the safety of children. Other concerns are that documentation has yet to be provided about the red snake. The Williamson Act may also be an issue since the location was formerly a chicken farm. Ms. Fresno strongly objected to the fact that phone numbers had been given to church members, and felt it was an invasion of privacy. She also said a lesbian couple was never notified of meetings. Neighborhood people have not been invited to a church service which leads people to believe it is a cult. Her belief is that only nine church members reside in Castro Valley. A lack of information has been available to the public regarding the application. The Castro Valley Library only had reports two days prior to meetings.

Mr. Resies a resident on Milton Avenue, located two doors from the church concurred with the former speaker. He is a parent of a 16 month old, and has a new baby on the way. Neighbors on the cul-de-sac are tight knit. They have dinner at one another's homes every week. An uncontrolled intersection would change the current life style and create possible safety issues. A member of First Baptist Church himself, he did not believe the street preaching way of life gave back to the community. Other churches give financially to their communities. The Brethren Congregation appears to be inclusive, and exclusive.

Deena Burton who lives at 4005 Milton Avenue attended two MAC Meetings, and was unaware of the first meeting that was held. She did not think the opening of Vaughn and Milton Avenues was a good idea. Seven Hills Road is located on a slope, two cars cannot pass when there are cars on one side of the street. French drains had to be installed on her property to resolve drainage issues. Other people in the neighborhood may not have the money to do the same. She felt the addition of single family units as opposed to a church would increase property values and give revenue to the community. She regretted that a request to postpone the meeting because people received plans one day prior to the hearing was not honored.

Real Estate Agent Tianne Rinetti-Vitturia said she became acquainted with the Brethren when she sold several pieces of their property in Oakland. They are an asset to the community and she would choose to live near them hands down. They have purchased property near many different types of people and do not discriminate based on race, creed, color or life style.

Becky Anderson from Coldwell Banker Real Estate said she had participated in the Civil Rights and Feminist Movements. She begged the community to have tolerance. Many church members have moved

from out of state to this area. It appears this is a case of NIMBY. The Members don't watch television and listen to the radio but they shop at Safeway and Albertsons like any other family and they laugh, pray, raise their families together and have high moral character. The women do not walk behind the men. They are seeking a use permit. It would be a travesty if the permit were denied.

Mrs. Adesanya asked the Board if the applicant could provide rebuttal testimony. In their opinion the issues brought up were not land use related issues. The Brethren has been accused of being racist, prejudiced and engaging in occult practices. Bay Gospel Halls is a congregation of Plymouth Brethren, a world wide, multi racial, multi ethnic, well established Christian organization. Extensive material about the church was distributed to the entire neighborhood. Only four letters were returned as non deliverable. In her experience as a long time planner with Alameda County, City of San Francisco and City of San Mateo she has come to realize that it is hard on the community when open land is developed. She encouraged the church to knock on doors and call people as a way to get information out. She is familiar with the whip snake. County Planners have determined the site is not a habitat. There are lizards on the site however there are lizards everywhere in Castro Valley. A denial of the application would have to be based on codes or land use issues. She asked the Board for their approval. A packet containing the history of the Plymouth Brethren and letters of support from their former neighbors in Oakland was given to the Board. Relevant concerns that have been addressed and the applicant's proposals are as follows:

- A new drainage system that meets County standards will be installed
- A transportation management plan that reduces traffic will be submitted prior to issuance of a building permit. The plan incorporates carpooling and other measures
- The street light will be replaced above the entrance on Seven Hills Road with higher wattage light
- The driveway will be moved as far east as possible, to the crest of the knoll, allowing cars visibility as they exit
- Two church members will live on site and can respond to any issues
- The applicant has worked with the adjacent neighbor on Vaughn Street. As a result the mechanical room will be located in the ceiling to reduce noise. There is now 22 feet from the back neighbors to the church property which should eliminate noise. There will be a 20 foot side yard set back
- An enhanced landscaping plan has been designed. The applicant will work specifically with two neighbors to design landscape buffers
- The construction hours may be reduced from the general Building Department Standards that were submitted. No construction will take place on Sundays

Mrs. Adesanya responded in regard to communication with the neighbors. The applicant wanted to ensure they got word to everyone. She did not know what other methods to employ other than mailings and getting out talking to people in the neighborhood. In regards to housing as opposed to a church the land is privately owned. The only proposal the land owner has put forth is a church. They have tried to do everything to stay within code. The congregation currently meets on Bauman Street in San Lorenzo. One of the Brethren Members can answer any further questions regards their worship services. She closed and again asked for approval of the application.

Member Friedman commented that the MAC's decision was 3/2 on the application. The Board asked staff what were some of MAC's discussion points. Staff said MAC talked about: egress on Milton and Vaughn Avenues. Mitigate impact to residences surrounding the church, especially the two neighbors who lived behind the property. A development with housing, vs. a church, houses could potentially impact the neighbors more than a church. A land owner's right to develop their property. Decisions should be considered thoroughly, and based on land use. They considered whether churches are a conditionally permitted use in the vicinity under the Zoning Ordinance. Some of the recommendations

have been incorporated into the EIR. For example, the church should be moved closer toward the center of the lot. Use larger set backs, 20 feet from the side and 22 feet from the rear. Exclude construction on Sundays. Allow emergency vehicle use only on Vaughn and Milton Avenues. Enhance the landscaping plan and reduce hours of activity in the evening. A majority of the MAC Members thought the use was compatible with the area.

Member Friedman said he understood the concern of one of the earlier speakers. If the Brethren is a community within itself, once they move into the neighborhood, they become an isolated unit within the community. Another question is what effect would street preaching have on the community at large. The applicant returned to address the Board. Street preaching is done in public places. For example the park across the street from Wells Fargo in San Leandro is a location where they preach. Market Street and Second Street in San Francisco is another location. No amplification is used. They do not knock on doors. Member Friedman asked if the church would compensate the residents who paid for the street paving. The church does not plan to use Milton or Vaughn Avenues. The access was dictated by the Alameda County Fire Department. The Fire Department would only access the roads for emergency vehicles. The church will access the property off of Seven Hills Road and will pay for any improvements necessary. Public testimony was closed.

Member Roos stated that a copy of the petition was not included in their packet. Staff brought copies to the Board. She also felt the reduced font made the site plan difficult to read. Member Palmeri said there were two functions of the Board of Zoning Adjustments. Consider the environmental document and make a finding. The second was consideration of the application itself. He was perturbed that changes were just given to the Board at the meeting making it difficult to digest all of the verbal changes. Many people came to testify in support and opposition of the application. It was not fair for people to wait while the Board makes a determination. Section #1, especially was replete with issues.

For example, in the Aesthetics Section every box that is checked off says less than a significant impact however mitigation measures are still recommended. Staff responded that the project met the maximum required by the zoning district in addition to trees that surround the parcel. From a planning standpoint there are no impacts. The purpose of the CEQA document is informational to provide alternatives to reduce any potential impacts. They also ensure the neighbors of what the project will look like. For example, there will not be a steeple on the property, and additional trees would reinforce a sense of height. Regarding possible Williamson Act issues, research was done and there was no Williamson Contract on the property. Member Palmeri responded that it would be more appropriate to indicate, less than significant with mitigation. All documentation should be updated with all changes. He listed changes for the following sections of the CEQA document:

- I. Aesthetics Section, Category a, c and d shall be changed to less than significant with mitigation. Mitigation Measure 1, bullet #3 shall be deleted. This error shall also be deleted from the staff report. The location of East Castro Valley Boulevard is not at this location and inserted into this report and the staff report in error.**
- IV. Biological Resources Category, there are no changes. Sections a thru f reflect no impact.**
- VI. Geology and Soils, Mitigation Measure #5, paragraph a, the language that states: be located on expansive soil.... Should be labeled d.**
- VIII. Mitigation Measure #6, addresses a, d, e and f.**

- XI. Noise, paragraphs, Noise during construction and Noise following construction should state less than significant with mitigation. The hours of operation should be altered. No construction is allowed on Sundays. Hours of operation shall become mitigation measures.**
- XV. TRANSPORTATION and TRAFFIC, Mitigation Measure #8, Section c air traffic should state no impact.**

Mitigation should be included about driveway relocation; and no ingress or egress on Milton and Vaughn Avenues unless emergency access is required by the Fire Department.

Member Palmeri motioned to approve the Environmental Impact Report as amended. Member Roos seconded the motion. Motion carried 4/0.

A letter in opposition, from Rene Lias received at the meeting was entered into the record.

Regarding the Conditions of Approval, Member Palmeri asked if an exhibit was available that reflected all of changes to made to the development itself. Staff said not yet however the changes were straight forward. There are just two changes. Set backs from the rear property line and the west side yard. The rear set back will be 22 feet from the rear to the main church hall. Instead of being 10 feet the side yard setback was increased to 20 feet. The Board requested the following Conditions of Approval: there shall be no pedestrian or vehicle access allowed on Milton and Vaughn Avenues. A locked gate will be placed to block access and the Fire Department will retain the key. The hours of operation on Sunday will be 6:00 a.m. to 9:30 p.m. Member Palmeri said he did not have a problem finding in the affirmative as long as some changes are made. Additional conditions the Board wanted to impose were that the temporary trailer must be removed after a period of 12 months. If the applicant is not ready at such time they must come back for an additional hearing. The BZA will also review the entire permit after a period of 12 months. This will let the neighbors address any unresolved issues. The Board can determine if changes or additional conditions are necessary up to and including revocation. Member Friedman commented that activities and services should end at 9:00 p.m.

Member Palmeri added that organizational activities can end at 9:00 pm. to give staff ½ hour to lock up. The applicant confirmed the conditions were acceptable.

Member Palmeri motioned to adopt staff's finding of approval of Conditional Use Permit, C-8145 with the following clarifications:

No pedestrian or vehicle access other than through Seven Hills Road. Some type of gate, subject to the approval of the Alameda County Fire Department and the Planning Director shall be installed. The Fire Department will retain a key to the gate. Access is restricted to emergency vehicles only.

The hours of operation on Sunday will be from 6:00 a.m. to 9:30 p.m. All services and functions shall end at 9:00 p.m. The property shall be vacant, except for residents living on site by 9:30.p.m. Start time the other six days of the week shall be at 8:00 a.m. ending at the same time and manner as Sunday Hours.

A plan shall be attached and on file with the Alameda County Planning Department that reflect set back changes; the rear yard set back 22 feet; and the west side yard 20 feet. In addition to plans that relocate the driveway.

A 12 month review will be conducted to review Conditions of Approval. The West County Board of Zoning Adjustments reserves the right to change, amend Conditions of Approval up to and including the right to revoke the permit.

This permit will be issued for a period of three years, (May 25, 2008) subject to the Conditions contained herein.

The temporary facility will be for a period of twelve months. If the applicant plans to extend the use of the temporary facility beyond 12 months to finalize plans etc, they must notify the Alameda County Planning Department. All information must be considered in a public process. Member Friedman seconded the motion to adopt the modified recommendations, Tentative Findings and Conditions and Findings. Motion to approve Conditional Use Permit, C-8145 carried 4/0. Member Spalding was excused.

2. **BERNARD J. VIGGIANO, CONDITIONAL USE PERMIT, C-8396** – Application to operate a small auto sales lot in an M-1 (Light Industrial) District, located at 311 West “A” Street, north side, approximately 248 feet west of Hathaway Avenue, unincorporated Cherryland area of Alameda County, designated Assessor’s Parcel Number: 0429-0077-018-04. (Continued from April 27, 2005).

Staff reminded the Board that the application had been before them at the April 27, 2005 Meeting. At the Board’s request the application was continued to obtain comments regarding the following:

- The City of Hayward’s comments on the project
- Recommendations, if any from Alameda County Clean Water
- Does the Redevelopment Agency have future plans for the surrounding area
- Specific details as to how the car lot would be differentiated from the rest of the parking lot

The City of Hayward did not respond. Comments from Alameda County Clean Water will not necessary, since cars will be detailed off site. Member Roos said she had visited the site and was unable to determine where the cars would be displayed. Public testimony was opened. Mr. Viggiano was present. He showed pictures to the Board to indicate the display area. He also presented a letter that he received from the Cherryland Association. Member Friedman asked where signage would be placed. He also asked if his recollection was correct, that the proposed operation was an effort to make work for a relative. The Chair asked if hay bales would still be used to catch the water used when servicing cars. Mr. Viggiano confirmed a relative would run the car business. Mr. Viggiano’s office, located within the building would be used for the proposed car business. The cars will be high end used cars. The property does have a dedicated catch basin however vehicles will be detailed at Hutch’s Car Wash. Public testimony was closed.

Member Palmeri asked if a representative from the Redevelopment Agency would be in attendance. Staff told the Board, Redevelopment staff was currently in another meeting. They should arrive prior to the end of the hearing. The Chair stated that he did not think the applicant could make Tentative Finding #1. A car lot limited to only two vehicles was not required by the public. He did not think the operation melded with surrounding businesses in the neighborhood. Member Palmeri did not think the business was consistent with others in the area. Member Roos motioned to deny the application. The Board is not able to find Tentative Findings #1 and #2 in the affirmative. Member Friedman seconded the motion. Motion carried 4/0. Member Spalding was excused.

3. **NICOLE MC GANN, CONDITIONAL USE PERMIT, C-8403** – Application to continue operation of an indoor recreation facility (dance studio) in a PD (Planned Development) District, located at 1432 Via Lacqua, southeast side corner, southeast of Channel Street, unincorporated San Lorenzo area of Alameda County, designated Assessor's Parcel Number: 0411-0039-009-00.

Staff recommendation was approval of the application. Public testimony was opened. A representative, spoke for Ms. Mc Gann. She is a teacher and could not be present. She will defer to the Board's decision, reschedule for a date during the summer, or an evening meeting. Public testimony was closed. Member Palmeri motioned to adopt staff's Tentative Findings of approval subject to the Conditions contained therein. Member Roos seconded the motion. Motion carried 4/0. Member Spalding was excused.

4. **ADELA & PABLO VALLADARES, VARIANCE, V-11920** – Application to: 1) construct a new single family dwelling and maintain an existing 10 foot wide driveway where 12 feet is required; and 2) a zero foot setback from the driveway to dwelling wall where 10 feet is required in a R-S-SU (Suburban Residence with a Secondary Unit) District, located at 20556 Cambridge Avenue, east side, approximately 174 feet south of Hampton Road, unincorporated Cherryland area of Alameda County, designated Assessor's Parcel Number: 0414-0041-051-00.

Staff reviewed the application. The recommendation was approval. The Chair asked staff to confirm that Alameda County Fire and Building Department recommended approval. Staff confirmed that Pre-Hearing Recommendations #3 and #4 required the applicant to comply with Fire and Building requirements, and conditions. Member Friedman asked if there were similar lots in the area. Four lots have similar configurations. Developing the rear area of parcels proves difficult without removing the front dwelling. Variances for relaxed driveway widths have been granted in the area as well. Member Roos interjected that a decision should be made based on the application, not on the fact that prior variances had been granted. Public testimony was opened.

A representative spoke on behalf of the applicant who could not be present. Mr. Joshua Rodrigues said the applicant's project requires a variance to complete the addition only because a chimney protrudes into a portion of the driveway. Parking for the addition can be provided and similar variances have been granted in the area. Member Roos asked about the reference in the staff report to affordable housing and the price range the applicant considered affordable. Mr. Rodrigues said he was considering renting the property for \$800.00 per month. If he sold the property it would be a couple of years in the future. Member Palmeri commented that the plans submitted were not very informative. Elevations were not provided. Details like parking space locations and specifics regarding paving the approach of the rear unit were omitted. It would be prudent to implement conditions. The site plan could be modified. Parking can be moved further south and limited to a maximum of 25 feet behind each stall. Staff added that the rear dwelling would be composed of fire retardant materials and require sprinklers.

Public testimony was closed. The Board reviewed materials in the staff report. Member Palmeri commented that the lack of elevation drawings and details regarding the specific location of parking, pavement etc. made it challenging to implement conditions. According to the site map, perhaps parking could be moved further south on the lot. Member Roos motioned that the applicant could not meet the Tentative Findings #1 and #2. There are identical lots with the same configuration in the neighborhood. Granting the application would constitute a special privilege. The Chair passed the gavel to Vice Chair, Ron Palmeri and said he thought the chimney did constitute a special circumstance. The applicant's only options would be to tear down a portion of the chimney or the house. Many of the lots in Cherryland had

a narrow frontage. He was in favor of approving the application. Member Friedman added that if the chimney were not present a variance would not be necessary. Member Palmeri seconded Member Roo's motion. The vote was tied 2/2. Member Friedman and the Chair were in favor of approval of the application. Members Roos and Palmeri were not in favor of approval. Member Spalding was excused.

5. **DEBRA L. MUELLER, VARIANCE, V-11926** – Application to construct an attached addition providing a 10 foot rear yard where 20 feet is the minimum required in a R-1-CSU-RV (Single Family Residence with Conditional Secondary Unit and Recreational Vehicle) District, located at 2537 Nordell Avenue, south side, approximately 253 feet east of Zeno Street, unincorporated Castro Valley area, designated Assessor's Parcel Number: 084A-0205-023-00. (Continued from May 11, 2005).

The Staff recommendation was approval. An error in the staff report was brought to the Board's attention. The project description states: providing an eight foot rear yard. It should state providing a ten foot rear setback. All noticing that went out was correct, as well as the agenda. Public testimony was opened. The Board asked the applicant if any consideration had been given to upwards expansion as opposed to expansion in the rear. Public testimony was opened. Mr. and Mrs. Mueller were present. Mr. Mueller said, removing the wall for a rear expansion allowed the family to enlarge the kitchen.

The Board called Laura Childers from a submitted speaker card but she was no longer present. Public testimony was closed. Member Roos asked staff about a reference in the staff report regarding a variance that was denied on the same street. Staff explained to the Board that the application referenced was for a two story addition that overbuilt the rear yard. The proposed design would have eliminated private open area required for a single family dwelling. The staff recommendation was denial. In the end the applicant was not present at the hearing and the variance was denied. In reference to the current application being considered, Member Friedman asked staff what the total square footage of a conforming addition would be. Using a compensating open space calculation, the addition can be 186 square feet. The applicant is proposing a 240 square foot addition. If the addition were decreased by two and one quarter feet, it would be conforming. For example: if the rear set back were 12 feet and six inches there would be no need for a variance. Member Roos said she did not want to nag, however she felt the Board could not consider issues in isolation. Excluding the corner lots in the neighborhood, 18 other lots of similar size and dimension existed. Member Friedman commented that a reduction differing 60 square feet was all that was needed to eliminate the need for a variance.

Member Palmeri motioned there were no special circumstances. Neighboring properties have the same dimension, standard lot size, and zoning description. Staff also indicated that with minor modifications a variance would not be required. Granting the application would constitute special privilege. Tentative Finding #3 can remain as stated in the staff report. Member Friedman seconded the motion. Motion to deny the application carried 4/0. Member Spalding was excused.

6. **MATIAN BOT, VARIANCE, V-11927 and SITE DEVELOPMENT REVIEW, S-1984** – Application to allow construction of a new dwelling so as to provide an eight foot setback between access driveway and building wall and to maintain a four foot six inch side yard setback where 10 feet is the minimum required in a R-S-SU (Suburban Residence, Secondary Unit) District located at 147 Medford Avenue, south side, approximately 337 feet east of the intersection with Meekland Avenue, in the unincorporated Cherryland are of Alameda County, bearing Assessor's Parcel Number: 429-0010-014-02.

Staff recommended approval. The board asked for clarification on the following points:

- How many structures are included/affected by the applicant's variance request
- Is there an existing house in the front of the parcel
- Where will the new proposed house be placed on the parcel
- Will any of the existing structures be torn down

Staff told the Board, two structures currently exist on the property. Sheds and accessory structures also exist on the property. The structure in the rear will be torn down and replaced. The dwelling would be 37 feet from the front setback. Member Palmeri asked if the structure to be replaced was currently inhabited. He thought the Board would be creating a non-conformity, and possible future issues by granting the variance. Public testimony was opened.

Mr. Bot was asked by Board Member Roos why three mailboxes were located on the property. He said the at one time both the front and back houses on the property were rented. Now only the home in the front of the property is occupied. He uses one of the addresses (mail boxes) to receive mail for his business. One home toward the rear will be torn down. An architect assisting Mr. Bot then addressed the Board. The applicant needs an eight foot set back from the driveway to develop the rear area of the property. He would like to make a walkway from the front to the rear portion. A variance would make it easier. Member Palmeri asked what the intent of the applicant was because the front of a structure would be facing a driveway there was a potential impact on future width requirements if the property were subdivided.

Staff said the driveway could be extended to other structures on the parcel or the rear could be turned into a private street that would require a 20 foot driveway setback. Member Palmeri said he had concerns looking into the future. It may be worth the applicant sitting down with staff to determine what the future development will be. Factoring in future needs now could avoid the variances in the future, if density became higher. Staff said the lot would still need variances. Member Palmeri thought it was beneficial to consider exactly how the driveway approach would be configured. The architect said another possibility was to leave 10 feet in front of the rear house. The house could also be pushed back toward the fence on the west side. Planning staff had also suggested this alternative. Member Palmeri told the applicant a decision could be made now based on the information presented. Another option would be to postpone a decision to allow time to work out future issues. He asked staff if the Board could restrict further development on the property if it meant a non compliance was created now. County Counsel, Brian Washington said he would do some research and notify staff. The Chair asked the applicant if he was under a time constraint. Mr. Bot said he had borrowed money from the bank last year and was currently paying interest. Member Roos suggested that the applicant try to reconfigure the project design. County Counsel shall research the Board's question. Member Roos motioned to postpone the application to the June 22, 2005 Meeting. Member Friedman seconded the motion. Motion carried 4/0. Member Spalding was excused.

7. **RICHARD BRENKWITZ, VARIANCE, V-11935** – Application to allow reconstruction of an attached accessory structure (carport/garage/storage area) in the front half of the lot where not otherwise permitted, in a PD [Planned Development, 1660th Zoning Unit, allowing R-1-L-B-E and R-1-L-B-E-SU (Single Family Residence, Limited Agricultural, 20,000 square feet Minimum Building Site Area, Secondary Unit) uses when municipal water and sewer service is available] District, at 24013 Eden Avenue, west side, approximately

100 feet south of Middle Lane, unincorporated Mount Eden area of Alameda County, designated Assessor's Parcel Number: 0441-0087-002-00.

Member Palmeri departed the meeting at 4:10 p.m.

Staff Member, Ronald Gee told the Board that verbal comments from County Staff indicate that permits have been issued for the structures on the property. A separate garage was built in the front of the lot in 1968. Permits were obtained from the Building Department in 1969. The original plans showed a garage but not the carport. He clarified that there was no connection between the house and garage. Board Members questions were the following:

- What are the Fire Department issues
- Should Tentative Finding #1 be in the affirmative
- Would the finish on the rebuilt structure match the existing home
- Will the structure be on the property line

Mr. Gee confirmed that the structure would match the existing house. The new design would just be three foot larger and rectangular in design to match the line of the home. If reconstruction is allowed the accessory structure will be on the property line. Zoning requirements for an attached accessory structure allow such placement. Staff confirmed that Tentative Finding #1 should be stated in the affirmative. Public testimony was opened.

Mr. Brenkwitz said he was not clear about the permit confusion. He built the carport in 1969 only after he received permits. He showed the Board the original permit. The garage was in existence when he purchased the property. He presumed it was built at the same time in 1928. His architect brought in preliminary plans to the Planning Counter in May, 2004. Deric Licko in Planning and Art Mateo in Building talked with him about requirements. The appropriate plans were completed. Later when Mrs. Basunia reviewed them he was told reconstruction could not take place in the front half of the lot. He took that opportunity to read the zoning ordinance and thought the language was confusing. He contacted Supervisor's Gail Steel's office in December. Her assistant Mr. Perez spoke to Staff Planner, Ronald Gee. Replacement of the storage and the carport was acceptable if the existing square footage remained the same. When plans were submitted to Mr. Gee the architect was told repairs must be limited to an aggregate cost at a maximum 25% assessed value of the building improvement in any 12 month period. Both the value of the home and accessory structures were used for calculation. We were later told the value of the home could not be included. Because of termites and dry rot the structures will not meet building codes. Mr. Gee suggested a variance. He disagreed with the condition that he deed nine feet of property frontage to the County. He closed and asked for Board approval of the application. Public testimony was closed.

The Board discussed with staff why a variance was necessary in this case. The old garage is currently being used for storage and the carport is being utilized as the garage. Staff clarified due to the fact the structures were located in the front half of the lot, zoning ordinance would require a variance to rebuild them. It is standard practice to ask for a nine feet of frontage. The Chair commented that he thought it took away the rights of the property owner without compensation. Member Friedman asked if the new structure would have a one hour fire wall. Staff confirmed that it would.

Member Roos motioned to approve the application. Tentative Finding #1 shall reflect in the affirmative. Pre Hearing Recommendation shall omit the requirement to dedicate property frontage to Public Right of Way. Member Friedman seconded the motion. Motion carried 3/0. Member Spalding was excused.

APPROVAL OF MINUTES:

Member Roos motioned to approve the Minutes of May 11, 2005 with submitted corrections. Member Friedman seconded the motion. Motion carried 3/0.

STAFF COMMENTS & CORRESPONDENCE:

Staff announced that as a result of lay offs and a staffing shortage, Alameda County Clean Water will only respond to referrals if there are issues with an application.

CHAIR'S REPORT: No Chair's report was submitted.

BOARD'S ANNOUNCEMENTS, COMMENTS AND REPORTS:

Board comments regarding the staff letter for the Board of Supervisors Meeting on June 3, 2005 were as follows:

Member Spalding thought the letter should have included the fact that the applicant was given over 12 months to complete the sound study. She also felt proper weight was not given to the Board of Zoning Adjustments thoughts that the applicant was dragging his feet. Member Friedman said the fact that the sound meter the applicant purchased from Radio Shack gave variable readings was important. Although the noise ordinance allowed some flexibility, the information the applicant submitted was not relevant to the proposed use. He asked County Counsel if flexibility regarding the noise ordinance was limited specifically to churches or if could be applied to other uses. County Counsel said he would have to familiarize himself with the specific ordinance and report back. Member Roos said that she would testify at the Board of Supervisors Meeting to ensure the Board of Supervisors understood the intent of Board of Zoning Adjustment's decision.

Member Friedman announced that he would not be present for the June 8, 2005 Meeting.

ADJOURNMENT:

There being no further business, the hearing adjourned at 5:00 p.m.

CHRIS BAZAR - SECRETARY
WEST COUNTY BOARD OF ZONING ADJUSTMENTS