

**MINUTES OF MEETING**  
**WEST COUNTY BOARD OF ZONING ADJUSTMENTS**  
**OCTOBER 13, 2010**  
**(APPROVED OCTOBER 27, 2010)**

The Regular Meeting was held at the hour of 6:00 p.m. in the Alameda County Building, 224 West Winton Avenue, Hayward, California, 94544.

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

**MEMBERS PRESENT:** None. The Field Trip was cancelled. Members visited sites on an individual basis.

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

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

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

1. **AT&T / ELIZABETH ZAININONCH, CONDITIONAL USE PERMIT, PLN-2010-00077** - Application to allow continued operation of a telecommunications facility (cell site) with modifications in an M-1 (Light Industrial) District, located at 22020 Center Street, east side approximately 270 feet northwest of Grove Way, in the unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 417-0010-007-05. **Staff Planner: Richard Tarbell.**
2. **VILLAGE BAPTIST CHURCH, CONDITIONAL USE PERMIT, PLN-2010-00115** - Application to allow continued operation of a telecommunications facility, in an R-1 (Single Family Residence) District, located at 1535 Bockman Road, north side, northeast of Brandon Avenue, in the unincorporated San Lorenzo area of Alameda County, designated Assessor's Parcel Number: 411-0057-183-00. **Staff Planner: Christine Greene.**
3. **AILIAN LU / CHINESE HEALTH CENTER, CONDITIONAL USE PERMIT, PLN-2010-00135** - Application to allow operation of a massage therapy business (Chinese Health Center) offering acupuncture, acupressure, pressure point massage and foot reflexology, in a C-1 (Retail Business) District, located at 17780 Hesperian Boulevard, east side, south of Hacienda Avenue, in the unincorporated San Lorenzo area of Alameda County, designated Assessor's Parcel Number: 412-0071-024-04. **Staff Planner: Andy Young.**
4. **T MOBILE USA / CHRIS COONES, CONDITIONAL USE PERMIT, PLN-2010-00129** - Application to allow installation and operation of a telecommunications facility consisting of two cabinets and six antennas on a PG&E tower. The property contains 33,900 square feet (0.78 acres) and is in an R-1-BE-CSU-RV (Single Family Residential, Conditional Secondary Unit, Recreational Vehicle Parking Regulations, District, located at 5314 Crown Court, northwest side, approximately 284 feet, southwest of Greenridge Road, in the unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 085-1601-006-00. **Staff Planner: Sonia Urzua.**

**REGULAR MEETING: 6:00 p.m.**

**MEMBERS PRESENT:** Chair; Dawn Clark-Montenegro; Members, Jewell Spalding and Frank Peixoto.

**MEMBERS EXCUSED:** Vice Chair, Kathy Gil and Member Ineda Adesanya.

**OTHERS PRESENT:** Phil Sawrey-Kubicek, Senior Planner; County Counsel, William Fleishhacker; Code Enforcement staff; and Yvonne Bea Grundy, Recording Secretary.

There were approximately 13 people in the audience.

**CALL TO ORDER:** The meeting was called to order by the Chair at 6:20 p.m.

**ANNOUNCEMENTS BY THE CHAIR:** The Chair made no special 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.

**Neighborhood Preservation Ordinance Abatement Hearing**

1. **Recontrust Company, Carlwyn Drive, Castro Valley, CA 94546**  
In violation of Alameda County Ordinance 6.65.030 A(1&9).
  1. Overgrown weeds and vegetation.

Member Spalding motioned to uphold the staff recommendation . Declare the property a public nuisance, and require abatement to be complete within 10 days. Member Peixoto seconded the motion. Motion carried 3/0.

2. **BBS Investments LLC, APN:085-5475-002-00, Vacant Lot Jensen Road, Castro Valley CA 94546**  
In violation of Alameda County Ordinance 6.65.030 A(8,10) & B(6).
  1. Overgrown vegetation and weeds throughout the property.

Member Peixoto motioned to uphold the staff recommendation . Declare the property a public nuisance, and require abatement to be complete within 10 days. Member Spalding seconded the motion. Motion carried 3/0.

3. **Ramon & Virginia Delatorre, Meekland Ave., Hayward CA 94541**  
In violation of the Alameda County Zoning Ordinance Sections 17.10.020 & 17.10.030.
  1. Operating a contractor business on a property zoned R-2 (Two Family Residence District) which involves outdoor storage of supplies and equipment, employees and commercial vehicles. Storing commercial equipment (forklift) in a residential district.

Member Peixoto motioned to uphold the staff recommendation . Declare the property a public nuisance, and require abatement to be complete within 15 days. Member Spalding seconded the motion. Motion carried 3/0.

**Alcoholic Beverage Sale Regulations Administrative Hearing:** There were no items on the Alcoholic Beverage Sale Regulations Administrative Hearing Calendar.

**CONSENT CALENDAR:**

1. **FRED PRICE / EL SHADDI MINISTRIES, CONDITIONAL USE PERMIT, C-8762, PLN-2009-00037, VARIANCE, PLN-2008-00020** – Conditional Use Permit Application to allow continued operation of a church and a Variance Application to allow fewer than the required on-site parking spaces in a R-C ABCD (Residential Commercial, Ashland Cherryland Business Specific Plan) District, located at 565 East Lewelling Boulevard, south west side, corner southwest of Wickman Court, unincorporated San Lorenzo, area of Alameda County, designated Assessor's Parcel Numbers: 413-0031-053-00 and 413-0031-054-00. (Continued from November 12, 2008 and January 28, February 25 and May 27, June 10, July 8, September 23, October 28 and December 16, 2009; and April 14 and August 25, 2010; to be continued to December 15, 2010). **Staff Planner: Richard Tarbell.**
  
2. **AILIAN LU / CHINESE HEALTH CENTER, CONDITIONAL USE PERMIT, PLN-2010-00135** - Application to allow operation of a massage therapy business (Chinese Health Center) offering acupuncture, acupressure, pressure point massage and foot reflexology, in a C-1 (Retail Business) District, located at 17780 Hesperian Boulevard, east side, south of Hacienda Avenue, in the unincorporated San Lorenzo area of Alameda County, designated Assessor's Parcel Number: 412-0071-024-04. **Staff Planner: Andy Young.** (To be continued to October 27, 2010).

Member Peixoto asked staff if the location on Hesperian Boulevard is presently vacant. Staff told the Board the space was previously occupied by a furniture store. The space is now vacant. The new tenant proposes to keep the same footprint for the proposed business.

Member Spalding motioned to accept the Consent Calendar as presented. Member Peixoto seconded the motion. Motion carried 3/0.

#### **REGULAR CALENDAR**

1. **TERESA NAZARETH, VARIANCE, V-12114** – Application to allow construction of a 2,436 square foot, two story, single family dwelling with seven foot side yard setbacks where 15 foot setbacks are required. The parcel contains 0.12 acres (5,200) square feet and is zoned R-1-BE (Single Family Residential, 10,000 square foot Minimum Building Site Area) District, located at 3306 D Street, northwest side, approximately 1,000 feet east of Fairview Avenue, unincorporated Fairview area of Alameda County, designated Assessor's Parcel Number: 417-0220-004-00. (Continued from August 25, 2010). **Staff Planner: Jeff Bonekemper.**

Staff recommended approval, and reviewed the history of the application. The application was continued to allow the architect to present alternate design options. Initial Board questions were as follows:

- What is the lot creation history
- In 1948 was the Zoning District a combining District
- What was the average size parcel at that time

Staff responded in 1948 the 4<sup>th</sup> Zoning Unit established an R1-A District that combined Residential and Agricultural Zoning. No statistics were gathered at the creation of zoning, listing average parcel sizes.

Most likely the average parcel was larger than 10,000 square feet. The lot was created prior to 1948. The home was built in 1933. There were no accessory structures or secondary units on the property. The Fairview Specific Plan adopted a Minimum lot size of 10,000 square feet in 1981. Public testimony was opened.

Architect / Landscape Architect, Brent Downing was present representing the property owner. The takeaway Mr. Downing got from the Board was that he was to meet with neighbors. He made a series of revisions based on conversation with neighbors directly after the hearing. He also talked with some neighbors today, prior to hearing. Mr. Downing then referenced plans of the site, and described proposed revisions. Neighbors were concerned about close proximity to the adjacent neighbor at the rear left of the site. The elevation of the area topography is pretty flat. The floor plan was mirrored placing the more interesting architectural features on the left side of the home. Floor plan width has been reduced by 3 feet. As a result the profile of the home was slightly reduced. The 7 foot setback remains on the right side, with a 10 foot setback on the other side. A vegetative screen will be placed to the back corner of the property. The biggest concern expressed by neighbors today, is the right side of the property also needed a vegetative screen to soften the edge. This can be added as well, specified as a Condition of Approval. The tree at the rear of the site will not be removed. Mr. Downing circulated a letter to neighbors on the street to establish their opinions. He submitted the comments to the Board. The biggest concern raised was the appearance of the formerly condemned house. The owner would not like the structure to look like an apartment building, but a custom home that fits in the neighborhood. Elevations and floor plans show what the structure will look like. Board questions for Mr. Downing were as follows:

- Who is the property owner
- Has contact been made with the adjacent property owner that submitted an opposition letter
- Has Mr. Downing walked the site with the neighbors
- Does the design incorporate proposed Design Guidelines

Mr. Downing did consider proposed Design Guidelines. A window has been added to the living room as a result. Ms. Nazareth is the property owner. The property owner will offer the property for sale. Mr. Downing met with neighbors, Mr. Loss and Mr. Wilson immediately after the last meeting. Today he met with neighbors prior to the Hearing. He is not aware of a letter in opposition from Ms. Wilson. He has not walked the site with the neighbors.

Mr. Mark August lives on D Street. His home is on the west side of the Applicant's. He gave the Board a history of the parcel. The original owner of his home owned both properties. They lived in the now demolished bungalow while the home Mr. August currently lives in, was under construction. When complete a 52 by 100 foot section of the parcel was sectioned off including the bungalow, and sold. This is now the parcel in question. This is the first time Mr. August has seen proposed plans since the last meeting. The architect submitted plans to staff but never met with the neighbors. Mr. August is still opposed to the project. The mirrored floor plan may be slightly more aesthetical. However the setbacks are still not in compliance with the Fairview Plan. The proposal has not changed from the design the Applicant originally started to build, without a permit. The proposed vegetation screen is on the wrong side of the property. There is no Exhibit tied to the variance. Therefore no way to verify what will be built if the permit is granted. Mr. August had no faith in the Applicant, given the behavior exhibited. He remains opposed, and has little faith in the County thus far. Member Pexioto asked about the notation in the staff report that 7 feet side setbacks are in compliance. Mr. August responded the side setback requirements for Fairview are 15 feet, minimum. Staff explained in a District with a 5,000 square foot Minimum Lot Size requirement, 7 feet side setbacks are compliant. The Fairview District has a 10,000 square foot Minimum requirement. Counsel further clarified a 7 foot setback would be in compliance for lots similar to 5,000 square feet in size. Member Spalding pointed out the lot is non-conforming,

therefore not consistent in size with others in the area. Staff continued and said plans the Applicant submitted would become the Exhibit tied to the project. The only thing not submitted is a landscape plan. Further items can be added as required Conditions. Mr. August said he still did not believe the Exhibit was tied to the project.

Mr. Alan Loss lives at the rear of the site. He requested the large pine tree remain. It provides natural screening. He thought this topic, and others would be discussed with the architect. The only brief meetings were ad hoc, today outside the hearing room, and after the prior hearing. It is hard to make a thorough assessment. If the Board decides to grant the variance, it should be tied to the Specific Plan. If not, the project could end up as a two story monolith. A new home in the neighborhood should be an upgrade, not diminish the neighborhood. The Applicant has not provided a landscape plan. The Chair told Mr. Loss, Board consideration is based on plans presented. Staff confirmed further Conditions of Approval can be added, if the permit is granted. Public testimony was closed.

Member Spalding was concerned about a notation in the staff report. Minor modifications of the plan may be authorized upon the receipt of a request from the Applicant in writing for such modifications accompanied by drawings sufficient to show the proposed changes. This allows modifications without review by the Board of Zoning Adjustments. The variance request is more than 50 % of the minimum Ordinance requirement. The Applicant has only submitted a conceptual landscape design. Landscaping is important because of the small, lot size. These are issues to be addressed during a meeting with neighbors. She was uncomfortable with the application in its current form.

Member Peixoto did not believe the lot had unique features. The Applicant can build a smaller house. Regarding Tentative Finding #3, the lot is approximately 5,200 square feet. It does not meet the Fairview Specific Plan. The property is not sloped. Options are available that should be considered. Public testimony was re-opened to let neighbors ask further questions.

Mr. Loss asked the BZA to consider privacy, also if fencing would be included in the Landscape Plan. He would like the BZA to specify a 6 or 8 foot fence. Staff clarified the Zoning Ordinance allowed a 6 foot maximum height for rear yard fencing. Member Spalding noted this further emphasized the importance of landscaping.

Mr. Brent Downing told the Board he could provide a full landscape plan. This would include plantings, and fencing plans. Member Spalding responded, the Applicant is still asking for a variance more than 50% of the 15 foot minimum setback requirement. A 7 foot setback is severe, and aggressive. She asked Mr. Downing to explain what he believed to be the special circumstances, applicable to the property. Mr. Downing said the special circumstance in this case is small lot size. Members Spalding and Peixoto agreed the footprint of the dwelling could be reduced. Design options were available. Member Peixoto therefore did not believe required Tentative Findings #1 and #3 could be met. Member Spalding asked Mr. Downing if he was interested in further consultation with neighbors. Mr. Downing said he would be interested in a continuance to provide a more complete landscape plan. He will attempt to modify the design to comply with setbacks. He will also provide a sketch of a two story structure that would be allowed without a variance, for comparison purposes. It will show the alternative would look similar to an apartment building. The Chair asked if consideration had been given to a design oriented toward the front of the neighbor's house. Mr. Downing confirmed this option was considered. The design presented today is better. At first, screening consideration was not originally considered for the corner facing the neighbor's home. However suggested landscaping screening has now been incorporated into the design.

**Member Peixoto motioned to continue, Variance, V-12114 to the November 10, 2010 Hearing. Member Spalding seconded the motion. Staff will remove the note in the staff report regarding plan modifications.**

**The motion to continue, V-12114 Nazareth to November 10, 2010 carried 3/0.**

2. **AT&T / ELIZABETH ZAININONCH, CONDITIONAL USE PERMIT, PLN-2010-00077** - Application to allow continued operation of a telecommunications facility (cell site) with modifications in an M-1 (Light Industrial) District, located at 22020 Center Street, east side approximately 270 feet northwest of Grove Way, in the unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 417-0010-007-05. **Staff Planner: Richard Tarbell.**

The staff recommendation was approval. The Castro Valley Municipal Advisory committee voted to approve the project 6/0. Initial Board questions were as follows:

- Is the proposal a continuing operation or addition of new equipment
- How much of the project will be visible from the immediate area
- Does the Redevelopment Agency have plans for the area

Staff explained antennas will be modified however the height and the configuration of the facility will remain unchanged. The facility is located between a liquor store and the Cal Trans Park and Ride lot. The two year permit expiration is proposed to facilitate co-location with another carrier's corresponding expiration date. A monopine design is recommended in two years, to further improve the facility. Public testimony was opened.

Liz Zaninovich was present representing AT&T. AT&T leases space on the pole which is owned by PG&E. The pole is 50 feet in height. The equipment area is 10 by 20 feet. AT&T will be replacing antennas with a flush mount design. There is another carrier located on the pole with arm mounted antennas. The ground area will not be expanded. The Board asked Ms. Zaninovich the following questions:

- Is AT&T in agreement with coordinated permit expiration to facilitate co-location
- Is it possible for AT&T to co-locate onto another pole

Ms. Zaninovich said she could only speak on behalf of AT&T regarding the current application as proposed. She can inquire. Most likely AT&T would prefer to add a new pole, and then allow other carriers co-location. However they lease from PG&E. PG&E has some limitations regarding co-location, and exercises a great deal of control. Public testimony was closed.

Member Spalding recommended a clause be added to the proposed Conditions of Approval. PG&E shall maintain the area surrounding the facility in a trash, and debris free manner. It may also be helpful to omit the clause that requires a use permit be implemented within 3 years or is no longer in effect. The clause is appropriate with telecom permits that expire in 10 years. However this permit expires in 2 years. Counsel responded the clause is part of the Zoning Ordinance, and remains in effect. If the clause is stricken from the use permit resolution, it would be inconsistent with the Zoning Ordinance. Public testimony was re-opened to speak with the Applicant.

Ms. Zaninovich told the Board there is a State of California law which states telecommunication facility permits are to be issued for a period of 10 years. County Counsel clarified the law allows for permits to be issued for reasonable period of time, considered to be 10 years. Permits can be issued for a period less than 10 years if there is a substantial reason, and findings can be made to that effect. Ms. Zaninovich said

she was not sure co-location met the threshold defined as “substantial”. AT&T would be willing to erect a new telecom pole that allowed other carriers co-location, if the Board would approve the project today. County Counsel listed possible options: AT&T could withdraw the current application. A new application can then be submitted for consideration, proposing a new pole with co-location; AT&T can let the BZA make a determination on the current application. If the application is approved, AT&T can choose not to implement the permit, and then submit a new application. Member Spalding commented the two year permit expiration was appropriate, since there is an attempt to clean up the area. The Chair agreed. The goal is to reduce visual clutter. Ms. Zaninovich decided to proceed with the current application.

**Member Spalding motioned to uphold the staff recommendation of approval with modifications. Condition #16 shall add language requiring PG&E to maintain the area surrounding the facility in a trash, and debris free manner. Member Peixoto seconded the motion.**

**The motion to approve, PLN-2010-00077, AT&T passed 3/0.**

**APPROVAL OF MINUTES:** Member Peixoto motioned to approve the Minutes of August 25, 2010. Member Spalding seconded the motion. The motion carried 3/0.

Member Peixoto motioned to approve the Minutes of September 8, 2010 with submitted corrections. Member Spalding seconded the motion. The motion carried 3/0.

Member Peixoto motioned to approve the Minutes of September 22, 2010 as submitted. Member Spalding seconded the motion. The motion carried 3/0.

**STAFF COMMENTS & CORRESPONDENCE:** The Board of Supervisor’s appeal of the Board of Zoning Adjustments decision regarding, Condition Use Permit, PLN-2010-00028 Seventh Step Foundation was denied. The BZA decision to deny the application was upheld by the Board of Supervisor’s.

The appeal of Club K9 INC. / Eric Fabianac, Conditional Use Permit, PLN-2010-00019 heard at the October 5, 2010 Board of Supervisor’s Hearing was continued. Supervisor Nate Miley would like staff to obtain further information about other counties and jurisdictions classification of dog kennels.

**BOARD’S ANNOUNCEMENTS, COMMENTS AND REPORTS:** Members Spalding and Peixoto asked Code Enforcement and Sheriff’s Departments staff to schedule further discussion regarding changes posed to the Alcohol Abatement Ordinance during Board discussion at the September 22, 2010 Meeting. Staff will forward the request to Code Enforcement and the Sheriff’s Department.

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

---

**ALBERT LOPEZ - SECRETARY**  
**WEST COUNTY BOARD OF ZONING ADJUSTMENTS**