

MINUTES OF MEETING
WEST COUNTY BOARD OF ZONING ADJUSTMENTS
FEBRUARY 8, 2006
APPROVED MARCH 22, 2006

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

FIELD TRIP: 1:00 p.m.

1. **SUSAN REGAL, CONDITIONAL USE PERMIT, C-8448** – Application to allow continued operation of a community care facility for up to 25 elderly adults, in an R-S-SU (Suburban Residence, Secondary Unit) District, located at 629 Hampton Road, south side, approximately 400 feet northeast of Western Boulevard, unincorporated Cherryland area of Alameda County, designated Assessor's Parcel Number: 414-0036-006-00.
2. **KERRIE RICE, CONDITIONAL USE PERMIT, C-8464** – Application to allow continued operation of a pre-school and after school care facility for a maximum of 125 children, in an R-1 (Single Family Residence) District, located at 22052 Woodroe Avenue, east side, approximately 850 feet north of Sparks Avenue, unincorporated Fairview area of Alameda County, designated Assessor's Parcel Number: 417-0110-063-00.
3. **CHERYL RAPP, CONDITIONAL USE PERMIT, C-8477** – Application to allow continued operation of a 62 bed residential care facility, in an R-S-D-35 (Suburban Residence, 3,500 square feet, Minimum Building Site Area per Dwelling Unit) District, located at 718 Bartlett Avenue, south side, approximately 550 feet east of Hesperian Boulevard, unincorporated Cherryland area of Alameda County, designated Assessor's Parcel Number: 432-0004-035-02.
4. **OMNIPOINT DBA/T MOBILE, CONDITIONAL USE PERMIT, C-8478** - Application to allow a cellular telecommunications facility, in an R-1-RV (Single Family Residence, Recreational Vehicle) District, located at 2301 Miramar Avenue, north side, approximately zero feet west of Crest Avenue, unincorporated Ashland area of Alameda County, designated Assessor's Parcel Number: 080A-0191-034-00.
5. **OMNIPOINT DBA/T MOBILE, CONDITIONAL USE PERMIT, C-8479** – Application to allow a telecommunications facility, in an R-1 (Single Family Residence) District, located at 800 – 820 Bockman Road, south side, approximately, 50 feet east of Via Media, unincorporated San Lorenzo area of Alameda County, designated Assessor's Parcel Number: 412-0082-001-00.
6. **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.

7. **LILLIAN AMMERMAN, VARIANCE, V-11981**- Application to allow a three foot, six inch side yard setback where 20 feet is required with the construction of a covered patio, in an R-1-L-B-E (Single Family Residence, Limited Agricultural Uses, 5 Acre Minimum Building Site Area) District, located at 4151 Amyx Court, south side, approximately 900 feet, west of Fairview Avenue, unincorporated Fairview area of Alameda County, designated Assessor's Parcel Number: 425-0280-003-00.
8. **MALIA LE, VARIANCE, V-11984** – Application to allow a five foot side yard setback where 15 feet is required with the construction of an addition, in an R-1-B-E (Single Family Residence, 10,000 Minimum Building Site Area) Fairview Specific Plan, located at 24780 Fairview Avenue, north side, approximately 1,200 feet left of Old Fairview Avenue, unincorporated Fairview area of Alameda County, designated Assessor's Parcel Number: 417-0270-005-00.

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:

CLOSED SESSION

Time: 5:00 p.m.
Place: 224 West Winton Avenue, Room 111
Hayward, California

CONFERENCE WITH LEGAL COUNSEL – POTENTIAL LITIGATION

- Significant exposure to litigation pursuant to Subdivision (b) of Government Code § 54956.9: (One Cases).

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

OTHERS PRESENT: Phil Sawrey-Kubicek, Senior Planner; Tona Henninger, Assistant Planning Director; Brian Washington, County Counsel.

REGULAR MEETING: 6:00 p.m.

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

MEMBERS EXCUSED: None.

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

There were approximately 27 people in the audience.

CALL TO ORDER:

The meeting was called to order by the Chair at 6:10 p.m.

ANNOUNCEMENTS BY THE CHAIR: The Chair made 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.

Mr. James Jardine, President of the Castle Homes HOA spoke. He told the Board that over time he had brought several ongoing issues to the attention of Planning and Public Works staff and thus far has not received a satisfactory response. Some of the issues are as follows:

His Neighbor, Neil Shumate has planted trees in the middle of a private road resulting in a narrowing of the road, site distance issues and damaged power lines. Mr. Jardine believed this could be addressed via the County Ordinance before someone got hurt. He added that water runoff from the neighboring property was causing issues on his property.

Mr. Neil Shumate also spoke during Open Forum. He said the trees were planted by the former owner of the property. He said he also had issues with Mr. Jardine including the placement of a septic tank. He has submitted issues to Public Works and can bring in his engineer to clarify the information.

The Chair asked staff to follow up on the issues raised by the speakers

CONSENT CALENDAR:

There were no items scheduled for the Consent Calendar.

REGULAR CALENDAR

1. **KERRIE RICE, CONDITIONAL USE PERMIT, C-8464** – Application to allow continued operation of a pre-school and after school care facility for a maximum of 125 children, in an R-1 (Single Family Residence) District, located at 22052 Woodroe Avenue, east side, approximately 850 feet north of Sparks Avenue, unincorporated Fairview area of Alameda County, designated Assessor's Parcel Number: 417-0110-063-00.

Staff recommended approval with a modification to Condition #3. The recommendation now is for five years. Member Spalding asked County Counsel if she should recuse herself due to a possible bias. She has two children that are graduates of the school facility. County Counsel confirmed that there would be no conflict. Public testimony was opened.

Ms. Rice told the Board that she had been the director for 21 years. She had a question regarding tires, based on testimony heard that evening regarding another application. The Board assured her that the tires used in the play area were acceptable. Public testimony was closed.

Member Palmeri motioned to approve the application with a modification to Condition #3. The CUP will expire on February 8, 2011. Member Spalding thanked Ms. Rice for doing such a great job with the

school, and seconded the motion. Motion carried 4/0.

2. **OMNIPOINT DBA/T MOBILE, CONDITIONAL USE PERMIT, C-8479** – Application to allow a telecommunications facility, in an R-1 (Single Family Residence) District, located at 800 – 820 Bockman Road, south side, approximately, 50 feet east of Via Media, unincorporated San Lorenzo area of Alameda County, designated Assessor's Parcel Number: 412-0082-001-00. (To be continued without discussion to February 22, 2006).

The applicant requested a continuance to submit modified plans. Member Spalding motioned to continue the application to February 22, 2006. Member Friedman seconded the motion. Motion carried 4/0.

3. **TAM, TAM, YU AND KUAN, VARIANCE, V-11952 and PARCEL MAP, PM-8738** – Application to allow a 18 feet wide driveway where 20 feet is the minimum and a six feet side yard setback where 10 feet is the minimum with subdivision of the site into three lots, in a R-1-CSU-RV (Single Family Residence, Conditional Secondary Unit, Recreational Vehicle) District, located at 18332 Carlton Avenue, east side, approximately 200 feet north of Dominic Drive, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 084B-0472-039-00. (Continued from September 28, October 12 and November 9 and December 7, 2005 and January 25, 2006).

The application was withdrawn per the applicant's request.

4. **THOMAS VAN VOORHIS, VARIANCE, V-11963** – Application to approve as two building sites, lots that are reduced in area from 100 acres to five acres and 73.23 acres; and one parcel without frontage on an approved county road in an "A" (Agricultural) District, located at 22000 Eden Canyon Road, southeast side, approximately one mile northeast of Hollis Road, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 085A-2201-012-00. (Continued from December 14, 2005 and February 25, 2006).

Staff recommended denial of the application. The Chair asked staff to review the zoning history of the parcel. The parcel was originally part of the Souza Ranch. In 1957 the area, including the subject property was zoned "A" Agricultural. In May of 1972, the minimum lot size for newly created parcels in the "A" District was changed from 5 acres to a minimum of (100 acres, Minimum Building Site Area). Staff added that in March of 2004 two Certificates of Compliance were issued to recognize that a 2.17 acre portion of an adjoining property was lawfully transferred to the ownership of the subject property. The issuance of the Certificates do not imply that approval is, or would be given to a parcel(s) for; Building Site status; a permit for a dwelling; or any other land use regulated by County Ordinance. Public Testimony was opened.

Mr. Van Voorhis apologized for the large amount of materials submitted, however he had just received the staff report. He has owned the property for 33 years. The property has been surveyed. In total it is 78.84 acres, although he pays taxes for 82 acres. He would like to make the parcel into two separate lots and sell one. Working with Fish and Game and Alameda County Fire it was determined in order to provide access to the parcels from Eden Canyon Road improvements would be necessary due to steep topography. A maximum of two houses would be allowed. He would like to sell one lot in order to generate funds to make all of the necessary improvements. Originally, he came to the Planning Department to file for a boundary adjustment to make the 2.17 acre parcel, 5 acres. He said at the time he spoke with Phil Sawrey-Kubicek and Darryl Gray. He was told that a parcel of an average size of 2.5

acres was allowed. His comments will focus on two areas, legal and equitable foundation. He does not oppose staff but has a difference of opinion. According to State law, the Subdivision Map Act and County Ordinance, what is required for compliance is to make one parcel 5 acres. This was the intent of the property exchange by the former owner in 1968 which met the 5 acre minimum. He referred to materials he had submitted to the Board, including Ordinance interpretation and photographs. He contented that if the variance was not granted it would create a hardship. Additional questions from the Board were as follows:

- Why had the 2.17 acre portion never been established as a 5 acre site during the prior A-2 Zoning
- What is the proposed access road width
- In Mr. Voorhi's opinion why would he consider that granting the variance would not constitute special privilege
- Could the Board grant the variance with density restrictions

Mr. Van Voorhis said he should have completed the recording process back in 1973. At the time all that was required was that the parcel be recorded at the County Recorder's Office. He did not realize there would be changes in zoning. Granting the variance would allow compliance with the current Zoning Ordinance. Alameda County Fire said the access road to the property would have to be 20 feet wide. The width of the proposed bridge traversing the creek could be 12 feet. His property is 200 feet lower than other properties in the area. In his opinion granting the variance would not set a development precedence of canyon lands as staff contends. Alameda County Fire would limit the number of homes to a maximum of two. His situation and property are unique.

Staff Member Darryl Gray told the Board potentially a number of lots could conceivably apply for variances based on potential Board action. Granting Building Site Status could also be in conflict with Measure D which restricts new development. Even when the 2.17 acre portion of property was obtained in 1968, only the 80 acre portion complied with the Zoning Ordinance minimum 5 acre lot size requirement. The Alameda County Assessor's Office also generates only one tax bill. Staff did inform the Board that one option could be to grant building site status on the 78 acre limit based on the prior zoning, limiting the applicant to one home and a secondary unit. However staff still recommended denial, based on the fact that the 2.17 acres acquired by a boundary adjustment never met the five acre minimum lot size requirement that was mandatory for building site status under the Zoning Ordinance that was in effect in 1968. The applicant purchased the 82 acre parcel in 1973. No property rights existed after May 1972 to create a five acre building site. Public testimony was closed.

Member Palmeri motioned to adopt the staff finding of denial of the variance. The 2.17 parcel was not in compliance with the five acre minimum lot size required by the Zoning Ordinance. The granting of the variance would not be a mild relaxation but a major alteration of the Zoning Ordinance. Member Spalding seconded the motion on the basis that: Although the applicant has somewhat of an argument that the requirements of Alameda County Fire create a special circumstance, that fact cannot overcome the issue with the Zoning Ordinance.

The 2.17 acre lot never had legal building site status. Granting of the variance could set precedence. Member Friedman said he was also concerned with setting precedence. However he was not in favor of denial. Based on the size of the parcel, the fact that Mr. Van Voorhis had owned the property for 33 years with two separate grant deeds held some weight in his mind. Motion to deny carried 3/1.

5. **LILLIAN AMMERMAN, VARIANCE, V-11981**- Application to allow a three foot, six inch side yard setback where 20 feet is required with the construction of a covered patio, in an R-1-L-B-E (Single Family Residence, Limited Agricultural Uses, 5 Acre Minimum Building Site Area) District, located at 4151 Amyx Court, south side, approximately 900 feet, west of Fairview Avenue, unincorporated Fairview area of Alameda County, designated Assessor's Parcel Number: 425-0280-003-00.

Staff recommended approval of the application. Member Spalding asked County Counsel if it would create a conflict of interest for her to hear the application. Mrs. Ammerman used to be the Treasurer of the Hayward Hills Homeowners Association an organization Ms. Spalding was involved with as well. County Counsel confirmed that it was acceptable for Member Spalding to hear the matter.

Staff submitted photographs to the Board. Board questions were as follows:

- Was the patio built with benefit of permit
- Does the patio satisfy Building Department Standards

Staff told the Board although the patio had been erected without permits the applicant would be required to obtain Building Department approval as a condition of the Variance. The patio has been in existence for a number of years and has thus far caused no detriment to the surrounding area. An existing slope on the west side of the property would prohibit a patio area. Member Spalding confirmed that she had visited the property in the past and steps were required to access the area. Public testimony was opened.

Mrs. Ammerman told the Board that property sloped in the front and along the west side. The original patio roof was made of corrugated plastic to provide shade. It was then replaced with a permanent roof. Mrs. Ammerman's daughter, Linda Barber confirmed that permits from Fire or Building had not been obtained. Public testimony was closed.

Member Spalding motioned to uphold the staff recommendation of approval. Pre Hearing Recommendation #1 shall be modified to include that: The existing slope on the property constrains new conforming construction. Member Spalding seconded the motion. Motion carried 4/0.

6. **MALIA LE, VARIANCE, V-11984** – Application to allow a five foot side yard setback where 15 feet is required with the construction of an addition, in an R-1-B-E (Single Family Residence, 10,000 Minimum Building Site Area) Fairview Specific Plan, located at 24780 Fairview Avenue, north side, approximately 1,200 feet left of Old Fairview Avenue, unincorporated Fairview area of Alameda County, designated Assessor's Parcel Number: 417-0270-005-00.

The staff recommendation was approval. The home was built prior to the adoption of the Fairview Specific Plan. Five foot side yards were allowed at that time. The current zoning requires 15 foot side yards. Photographs were submitted to the Board. A letter from the Fairview Community Club was submitted, requesting a continuance.

As of yet, they have not been able to speak with the applicant. Staff suggested that the Board take public testimony since the applicant was present. Public testimony was opened.

The applicant, Ms. Le said she had been on vacation and recently returned. Her boyfriend did eventually speak with Charles Snipes of the Fairview Community Club. Member Spalding asked if there were any alternative placement options for the addition. Ms. Le said the other side yard was only seven feet. The

rear yard is sloped. Public testimony was closed.

Member Palmeri motioned to adopt the staff finding of approval. Tentative Finding #1 shall be modified to reflect the following additional information: The subject lot is 50 feet wide by 100 feet in length. All other lots, similarly zoned in the vicinity are larger. Member Spalding seconded the motion. Motion carried 4/0.

APPROVAL OF MINUTES: Member Palmeri motioned to adopt the Minutes of January 11, 2006 with submitted corrections. Member Friedman seconded the motion. Motion carried 4/0.

Member Palmeri motioned to adopt the Minutes of January 25, 2006 with submitted corrections. Member Friedman seconded the motion. Motion carried 4/0.

STAFF COMMENTS & CORRESPONDENCE: County Counsel, Brian Washington stated there was nothing to report from the Board Closed Session.

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

BOARD'S ANNOUNCEMENTS, COMMENTS AND REPORTS: There were no Board announcements.

ADJOURNMENT:

There being no further business, the hearing adjourned at 10:15 p.m.

CHRIS BAZAR - SECRETARY
WEST COUNTY BOARD OF ZONING ADJUSTMENTS