

DRAFT
MINUTES OF MEETING
WEST COUNTY BOARD OF ZONING ADJUSTMENTS
MARCH 12, 2008
APPROVED APRIL 23, 2008

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: 1:30 p.m.

1. **IGLESIA MARANTHA, CONDITIONAL USE PERMIT, C-8701** – Application to allow continued operation of a church, in an R-S-D-35 and R-S-D-3 (Suburban Residence, 3,500 and 3,000 square feet Minimum Building Site Area per Dwelling Unit) District, located at 21625 Western Boulevard, west side approximately 150 feet northwest of Willow Avenue, unincorporated Cherryland area of Alameda County, Assessor’s Parcel Number: 429-0050-007-00. **Staff Planner: Christine Greene.**

2. **BILLY & KIMBERLY YATES, VARIANCE, V-12099 and SITE DEVELOPMENT REVIEW, S-2089** – Variance Application to allow reduced parking and two roof signs where otherwise not permitted, and a Site Development Review to allow an addition onto an existing restaurant, (JD’s) located at 2837 Castro Valley Boulevard, south side, approximately 390 feet west of Nunes Avenue, unincorporated Castro Valley area of Alameda County, bearing Assessor’s Parcel Number: 084A-0017-003-00. **Staff Planner: Pat Anekayuwat.**

3. **SOLAR DESIGN CA. INC, VARIANCE, V-12100** – Application to allow a six foot side yard where 10 feet is required in conjunction with a residential care facility in an R-S-D-20 (Suburban Residence, 2,000 square foot per Dwelling Unit) District, located at 20531 Forest Avenue, west side approximately 750 feet north of Castro Valley Boulevard, unincorporated Castro Valley area of Alameda County, bearing Assessor’s Parcel Number: 084C-0724-079-00. **Staff Planner: Christine Greene.**

4. **KENNETH A. KREMER, VARIANCE, V-12104** – Application to allow expansion of a nonconforming use (2 story secondary unit with reduced setbacks) with construction of a detached garage, in an R-1-CSU-RV (Single Family Residence) District, located at 22440 Charlene Way, east side approximately 200 feet southeast of Redwood Road, unincorporated Castro Valley area of Alameda County, bearing Assessor’s Parcel Number: 416-0130-001-00. **Staff Planner: Christine Greene.**

MEMBERS PRESENT: Frank Peixoto and Kathy Gil.

MEMBERS EXCUSED: Chair; Jewell Spalding; Members, Dawn Clark-Montenegro and Ineda Adesanya.

OTHERS PRESENT: Phil Sawrey-Kubicek, Senior Planner.

REGULAR MEETING: 6:00 p.m.

MEMBERS PRESENT: Vice Chair, Frank Peixoto; Members, Dawn Clark-Montenegro, and Kathy Gil. The Vice Chair announced that Chair; Jewell Spalding; and Member Ineda Adesanya would arrive late to the Meeting.

MEMBERS ABSENT: None.

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

There were approximately 14 people in the audience.

CALL TO ORDER: The meeting was called to order by the Vice Chair at 6:00 p.m. The Chair; Jewell Spalding; and Member Ineda Adesanya arrived at 6:15 p.m.

ANNOUNCEMENTS BY THE CHAIR:

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. **FIRST BAPTIST CHURCH, CONDITIONAL USE PERMIT, C-8619** – Application to allow continued operation of a church, in a C-N (Neighborhood Business) District, located at 4274 Seven Hills Road, north side, corner west of Watters Drive, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 084D-1212-001-11. (Continued from July 25, 2007; to be continued to April 23, 2008).
Staff Planner: Richard Tarbell.
2. **JOHNNY POUR, CONDITIONAL USE PERMIT, C-8669** - Application to allow an auto sales and repair business in an ACBD - TC (Ashland and Cherryland Business District Specific Plan) Transit Corridor District, located at 21621 Mission Boulevard, southwest side, approximately 150 feet west of Rufus Court, Unincorporated Cherryland area of Alameda County, Assessor's Parcel Number: 428-0006-108-00. (Continued from January 9 and February 13, 2008).
Staff Planner: Andy Young. THIS APPLICATION HAS BEEN WITHDRAWN.
3. **JEFFERY & JANELLE MC DONALD, VARIANCE, V-12094** – Application to allow a six foot high fence where two feet, and four feet is the maximum allowed in an R-1-CSU-RV (Single Family Residence, Conditional Secondary Unit, Recreational Vehicle Parking) District, located at Madison Avenue, west side corner, southwest of Seaview Avenue, unincorporated Castro Valley Area of Alameda County, designated Assessor's Parcel Number: 084C-0865-001-03. (Continued from January 23, 2008; to be continued to April 9, 2008). **Staff Planner: Howard Lee.**

The Vice Chair asked staff to verify the physical address for Variance, V-12094 when the item appears on

the April 9, 2008 Agenda.

Member Gil motioned to accept the Consent Calendar as presented. Member Clark seconded the motion. Motion carried 5/0.

REGULAR CALENDAR

1. **KENNETH KREMER, VARIANCE, V-12080-** Application to consider a petition to allow subdivision of one parcel containing approximately 17,362 square feet into two lots, with the retention of an existing secondary dwelling unit as a legal non-conforming use where not otherwise allowed, limited to ordinary maintenance and minor repair only, two stories in height where one story is the maximum, and with a two foot, six inch side yard where seven feet is the minimum for residential use, in an R-1 (Single Family Residence) District, located at 22440 Charlene Way, unincorporated Castro Valley area of Alameda County, Assessor's Parcel Number: 416-0130-001-00. (Continued from September 26, and October 10, November 7, 2007; and January 9, 2008). **Staff Planner: Andy Young.**

Staff reviewed the history of Variance, V-12080, and passed out an Addendum with corrected lot square footages, and lot consistency sizes. The BZA will be making a determination regarding the variance. The Planning Director will then make a determination regarding the parcel map. The parcel map will consider lot size consistency. The Castro Valley Municipal Advisory Committee reviewed both the parcel map and variance application on December 12, 2007, which included various alterations to the parcel map. CVMAC recommended that the Planning Director deny the subdivision, and that the BZA deny the variance application. Planning staff recommended approval of Variance, V-12080. Subsequently the applicant submitted a new application (V-12104). This application would not include the subdivision. The request is to allow expansion of the non-conforming building, the two-story unit with a reduced side yard setback, with the construction of a 2 car detached garage. Planning staff also recommended approval of V-12104. Staff asked the Board if they wished to consider both applications simultaneously. The Vice Chair and Member Adesanya preferred to hear the applications separately. Member Clark asked if consideration of V-12104 was contingent upon a decision regarding V-12080. Staff clarified that a variance would be required for the expansion of the non-conforming use. Each variance request would require an individual determination. Mr. Kremer said he also preferred to have each application considered separately. Public testimony was opened.

Mr. Kremer spoke in favor of his application. He wanted to clarify that only the variance request was before the Board. He said the description regarding V-12080 is inaccurate. The language stating (to allow subdivision of 1 parcel..) was not correct. The description (to allow expansion of a non-conforming use..) use is correct. He reiterated that the application before the Board was not for a subdivision. The Planning Director will make the determination regarding the balance of the application. Member Adesanya stated that she understood Mr. Kremer's point. However the Board takes the entire project into consideration when making a decision. Mr. Kramer said he was frustrated. He did not believe the project description was accurate, and wanted to state his concerns for the record.

Member Clark asked the applicant if he lives on the property. He confirmed that he did not. Mr. Kremer's business partner lives there, along with his son. Member Clark asked if there is a commercial use being conducted on the property. She visited the property last night. There were a total of 3 commercial vehicles parked on site, 2 vans and a work truck. Mr. Kramer said there was no commercial use. However he had one vehicle for sale. There is no business beyond that.

Mr. Gordon Burkart-Schultz asked if the variance is approved will another variance be necessary for the garage. The Chair reminded Mr. Schultz that the garage request was part of Application V-12104. The variance request for the Application, V-12080 is for a 2 foot set back from the existing secondary dwelling. Each variance application is separate, and will stand on its own merits. Mr. Schultz continued and asked if Variance, V-12080 were denied would the case for the lot split application become moot. The Chair responded that the Planning Director would render a decision regarding the parcel map. The BZA will only make a determination on the variance application. County Counsel further clarified that the variance would be a pre-condition of the lot split. Mr. Schultz also asked if the Board approves Variance, V-12080 if that in any way, endorsed the lot split. The Chair said no, because the lot split was not in front of the BZA, only the variance. Mr. Schultz then responded to the Addendum submitted at the start of the hearing. His comments for the record were as follows:

1. The residents on Charlene Way fully concur with staff's conclusion that the definition of neighborhood is very obvious when one drives on this street.
2. It is not appropriate to consider only the buildable lots when determining lot size consistency. The Lot Size Consistency Policy of Single Family Subdivisions in Castro Valley language says to consider all lots in the area, if not the intent of the policy is being changed. There was a great deal of energy put into developing this policy. What the applicant is asking for is not normal procedure.
3. Variance approval does not mean that the subdivision or lot split is automatically approved. All of the residents on Charlene Way adamantly oppose the lot split.

Mr. James Faulkner of 22506 Charlene Way announced that he would submit comments related to Variances, V-12080, and V-12104. He would also speak on his own behalf and his Mother in Law, Mrs. Lillian Barrett. He acknowledged the Chair's opening comments limiting the BZA to consideration of the variance. However this does not allow a forum to discuss the lot split.

The Chair responded that the Planning Director would make the decision on the lot split. Staff informed the Chair that both the lot split, and variance were considered at the CVMAC Meeting. County Counsel said that the Planning Director will take action on the subdivision regardless of the Board determination on the variance. Member Adesanya asked Counsel if the public was allowed to make comments on the subdivision application with the understanding that the BZA is not going to act on the variance portion of the application. County Counsel said that the Board has discretion to consider all of the testimony being discussed. The Chair also pointed out that although it has not been the practice of the Board to take action on a subdivision application, the Board does consider those issues related to the subdivision, and issues that relate to making proper findings, in support of a variance. Member Adesanya said that the purpose of the variance before the Board was to support a potential subdivision. There is no other purpose for the variance requests. Counsel told the Board that by their by action they do not express a position on the subdivision itself. The Board is merely making a determination on whether the findings required for a variance are met. Member Adesanya did not believe the issues could be separated in this instance. The 2 ½ foot setback from the property line is an existing pre-condition. The Chair then asked why a variance application was necessary. Staff said a variance would be needed for subdivision. However a variance would also be needed for anything done on the property, including an expansion or addition to the home, or the addition of an accessory structure at the rear of the site. This is as a result of the non-conforming status.

Mr. Faulkner resumed his presentation. His family's concern is the use of and potential damage to Mrs. Barrette's unimproved roadway, located on the eastern side of Mr. Kremer's property. If it is used by him or anyone else during construction work, there is strong probability that there would be damage to the

roadway. He shared pictures with the Board, and referred to a diagram in the staff report. The Barrett Family has held a permanent easement of the roadway since 1936 for ingress and egress. The road is used by the postman, the telephone company, and by emergency vehicles. The infrastructure was installed in 1934. It was not designed for heavy traffic, and the transportation of construction materials. The use of the roadway by Mr. Kremer would be courting disaster. There are gas pipes under the road. The staff report also points out that although Mr. Kremer claims to have permission to use the private roadway behind his property there has been no written conformation presented. Mr. Faulkner did not believe that Mr. Kremer respected property that does not belong to him. The grading of Mr. Kremer's property shows that he intends to use the easement. The grade of the road has been built up, flush with the Barrett easement. There are also tire tracks on the road that confirm it has been used. It is apparent that the only reason the build up the grade, is that Mr. Kremer plans to use the road without permission. Member Clark asked if the easement is the only entrance to Mrs. Barrett's property. He said no. There is another entrance to Lillian Barrett's property. Mr. Faulkner asked that the Board do the following:

1. Deny Variances, V-12080 and V-12104; and/or
2. If one of the variances is approved, a condition that a fence alongside the eastern side of the property be installed within ten working days of approval, or commencement of any construction, to prevent Mr. Kremer from using the easement access.

Mrs. Karolyn Burkhart Schultz testified on behalf of Mr. Larry Kuzni. Mr. Kuzni of 22450 Charlene Way was not able to be present due to illness. Mr. Kuzni is opposed to the variance because approval would affect his property. Member Gil asked for specific examples. Mrs. Schultz said that the Kuzni property is 2 parcels away from the proposed subdivision on the applicant's property. His lot is a large property. The new development would face into his parcel. This would make the back yard area of his property less desirable.

Mr. Kremer returned to respond to Mr. Faulkner's statement. He said that he had researched the chain of Title. This included the Grant Deed. The Right of Way is non exclusive. The Monez property is 2.5 acres. The Family has not presented a chain of title record that differs from his testimony. The Barrett's as well as Mr. Kremer have rights to access the easement. Any condition proposed that he be required to install a fence, is not acceptable. Member Gil asked Mr. Kremer if he had a copy of the Grant Deed. Mr. Kremer did not. Member Clark asked if the easement was relevant to the variance application. County Counsel thought the easement was relevant to application. Mr. Kremer said that he had ordered the chain of title. In any case he was not there to debate the roadway. That was not part of the agenized application. The language specified in the Grant Deed is that the roadway has non-exclusive access. Anyone on Charlene Way can access the easement. The easement terminates 16 feet east, and terminates 1 mile south of his property. He is only referring to the portion of the easement that is that is 16 feet behind his property. The two contiguous parcels owned by Public Storage have language included in the Grant Deed indicating a right to access 16 feet of the right of way, pertinent to 2.1 acres to the south of the Monez property. The balance of the easement is not accessible. To confirm this Mr. Kremer hired Attorney, John Caveneau of San Ramon. Member Gil said one of the concerns of the neighborhood is that heavy equipment will be used on the road. Mr. Kremer said that he would be willing to enter into a joint maintenance agreement with neighbors. This would address repairs, upkeep, or re-pavement etc. The Chair was unsure if upkeep was the responsibility of the easement holders.

Mr. Kremer again stated that he wanted to testify individually for each application, as he paid a separate fee for each application. The Chair asked Mr. Kremer if he had any additional testimony or comments to offer regarding Variance, V-12080. Mr. Kremer said that he concurred with the staff finding of approval. He did not have additional comments.

Mr. Faulkner returned to testify. He told the Board that Public Storage owned the easement on the east side of the Applicant's property. Someone from Public Storage told him that Mr. Kremer had not been given permission to use the easement without their consent. The Chair responded that the question posed was hypothetical, as a representative from Public Storage was not present to respond. Public testimony was closed.

The Vice Chair pointed out that the variance request was required because the existing secondary unit was built prior to Zoning. The existing unit therefore established a 2.5 foot set back. The Chair emphasized the Vice Chair's point, that the unit was pre-existing. There does not appear to be a need for a variance. The use has been established as a legal non-conforming use. The variance is only required because there is a request to sub-divide the property. The Applicant is not prevented from using the property or legally selling the property. Additional Board questions for staff were as follows:

- Is the variance required if the Applicant does not subdivide the property
- Can the secondary unit be expanded
- Would expansion be limited to a certain percentage of the land; or the structure
- Would expansion be limited to a certain percentage of the value of the structure
- Could expansion take place over a period of time
- Did property modifications take place over a time period when Zoning, was in effect

Staff said they did not have documentation to confirm the age of the structure. If the Applicant were to expand, the expansion would be limited to 25% of the value of the structure, per year. Zoning could have been in effect during the period of one or more of the modifications. Member Clark agreed based on her observation. Each structure on the property was composed of various materials, remodeling could have taken place over a period of time. The Vice Chair responded that the variance related only to the setbacks because the structure preceded zoning. Public testimony was re-opened.

Mr. Kremer said there were no records in existence. However the prior owner told him that stucco had been placed over the original redwood siding in the 1950's. Based on the building material and the information given to him by the prior owner, he believed that both structures were built prior to 1946. The Chair clarified that Mr. Kremer's testimony supported the belief that the secondary unit was a non-conforming use. Public testimony was closed.

The Vice Chair motioned to support the staff recommendation of approval. The Application can make all of the Findings in the affirmative. The Chair asked if he would be willing to discuss modifications to the motion. The Vice Chair declined, and restated the motion to uphold the staff recommendation and Findings as presented. The motion died, due to the lack of a second.

The Chair handed the gavel to the Vice Chair. Discussion ensued regarding the Findings.

The Chair interjected that no evidence had been presented that relocation of the unit was not possible. Therefore nothing deprived the Owner of privileges enjoyed by others in the vicinity.

Member Adesanya was not in agreement with Tentative Findings, #1 and #3. She was in agreement with Finding #2.

Regarding, Tentative Finding, #1. Relocating a structure does not deprive the Applicant of privileges enjoyed by other properties with the same zoning. She believed moving a structure was an economic decision.

Regarding, Tentative Finding, #2, Member Adesanya trusted staff had conducted research to confirm the portion of the statement, “for which subdivision has been approved or other expansion allowed”.

Regarding, Tentative Findings, #3. Granting the variance would be detrimental to the public welfare.

The Vice Chair asked Member Adesanya regarding, Tentative Finding #3 in what manner the variance for the existing secondary was detrimental, as the BZA could not consider the lot split. Member Adesanya said she personally felt the subdivision that could result from the granting of Variance, V-12080, would be detrimental. In contrast Variance, V-12104 which is to construct a detached garage would not be detrimental. The variance requests consider the same set back, but she felt the purpose of V-12080 is to subdivide the property.

The Chair was not in agreement with the stance posed in Tentative Finding #1. She was also not in agreement with Tentative Finding, #2.

Tentative Finding #1, There are no plans for construction, or improvements being installed. There appears to be no other purpose other than to subdivide the property. There has been no evidence presented that shows the secondary unit cannot be improved. The unit can be expanded by benefit of the Zoning Ordinance the 25% rule. The secondary unit has an established legal, non-conforming use. There is nothing that would require it to be re-located.

Tentative Finding #2. Staff should provide evidence of approved variances that support the portion of the statement, “for which subdivision has been approved or other expansion allowed”.

The Chair further commented that one of the issues the Board needs to balance is past approvals. The BZA did not exist 5 years ago. One of the reasons the BZA was instituted was to address just such issues. The fact that prior variances have been granted may not be sufficient consideration to rely upon, when making decisions.

Member Adesanya motioned to deny Variance, V-12080 on the basis that Tentative Finding #3 cannot be met. Granting Variance, V-12080 could allow a subdivision that would be detrimental to public welfare. The Chair asked if Member Adesanya was also addressing Tentative Findings #1 and #2 in her motion. Member Adesanya clarified that she was not.

Discussion regarding the motion ensued. The Chair suggested that no evidence had been presented to support the case that the Applicant had been deprived of privileges enjoyed by others. The existing non-conforming use is perfectly legal. Member Clark did not believe special circumstances were applicable. The Applicant has not been denied benefit of the legal non-conforming use. There appears to be no other reason for the variance other than to subdivide the property.

County Counsel said it did appear that the ultimate intent of the variance request is for a lot split or subdivision. The logic may appear to be circular as to what is granted first. The variance or the lot split. In a historical context, in this district and others, the variance request is addressed first. The variance is the pre-condition to the potential of the lot split. This is the function historically, and that is the case in most jurisdictions. The assumption is that the variance application is viewed as though the lot split application were to be granted. In that case the BZA views the application, because if the lot split is granted, you need the variance. As there is a change in the subdivision rules and regulations which

requires it. Therefore it is possible to consider Tentative Finding #1. The consideration would then be are there special circumstances applicable to the property that deprive the property of privileges enjoyed by other properties in the vicinity. Counsel cautioned the Board from making a non affirmative finding based solely on the fact that the variance would allow consideration of a lot split.

Member Clark asked Counsel if the relocation of the structure would be related to financial consideration, as the Board cannot consider economics. The Chair asked if re-location of the structure would not be considered a special circumstance, if it appears there are alternatives. The Applicant does not appear to be deprived. The Board should also determine if the special circumstance occurs as a result of the lot split by virtue of a change to the lot itself. The Applicant already has a non-conforming use. She reiterated that the staff report does not indicate why a lot split is necessary. County Counsel clarified that the lot split could only be granted if it does not create a non-conformity, on the site. The Chair said at the current juncture she would find that granting Finding #2 would be a grant of special privileges. Staff had not presented supporting data. Staff acknowledged they did not have data available at the meeting. However there are projects that have been approved, and retained non-conforming dwelling units. The Chair said the projects differed because they specified the end product. No specifics have been presented to confirm what will be built on the site. The Chair asked if the Board had the prevue to limit the application. Member Adesanya said she hesitated. The staff report did contain other substantive information. She believed staff did perform the back up research. She would be willing to add a requirement to the motion which requires staff to include documentation that supports Finding #2. Member Adesanya said she was prepared to repeat her motion to deny based on Finding #3. The Chair asked if the Board would like to continue discussion regarding Finding #3. Board Members declined. The Vice Chair and Member Clark said they were both prepared to second the motion.

The Chair asked a question to the motion. Would Member Adesanya like to address Findings #1 and #2, as there had been lengthy discussion on each Finding. The Vice Chair expounded that the Board was not required to make a determination on all Findings. If one of the Findings cannot be supported, the application is denied. County Counsel confirmed the Vice Chair's statement. It is acceptable for the motion to focus on one aspect of the finding to support the motion. Member Clark said regarding Finding #1, the Applicant would not be deprived as the structure is a legal non conforming use. Member Clark acknowledged that she believed that staff had, conducted research to support Finding #2. However the question is if neighboring properties were granted variances, as a result of unnecessary relocation. If the Applicant does decide to move the secondary unit, this again is a financial consideration. The Vice Chair asked if the description of the project which includes the subdivision of a parcel into 2 lots, including a secondary unit was acceptable, as the BZA is only considering the variance application. Counsel said the BZA decision regarding the varinace is relevant since their determination could lead to the possibility of subdivision.

The Chair said that the application still speaks to the point of Finding #1. There is no evidence that that the variance application is necessary, absent the Applicant's desire to subdivide the property.

Member Adesanya called for the question. To deny Variance, V-12080 on the basis that Tentative Finding #3 cannot be met. Granting Variance, V-12080 could allow a subdivision that would be detrimental to public welfare. Members Adesanya, Clark, Gil, and the Chair were in favor of denial. The motion to deny Variance, V-12080 passed 4/1. The Vice Chair was in favor of upholding the staff recommendation of approval of the application.

2. **KENNETH A. KREMER, VARIANCE, V-12104** – Application to allow expansion of a nonconforming use (2 story secondary unit with reduced setbacks) with construction of a detached garage, in an R-1-CSU-RV (Single Family Residence) District, located at 22440 Charlene Way, east side approximately 200

feet southeast of Redwood Road, unincorporated Castro Valley area of Alameda County, bearing Assessor's Parcel Number: 416-0130-001-00. **Staff Planner: Christine Greene.**

The Castro Valley Municipal Advisory Committee recommended approval of the application. Staff recommended approval as well. Member Clark asked if the proposed garage would meet Zoning Ordinance set back requirements. Staff confirmed that was the case. Public testimony was opened.

The Applicant Mr. Kremer was in agreement with the staff findings. Board Members asked the following questions:

- Proportionally what is the size of the proposed garage compare to the existing home
- Is the variance request for an expansion of a non-conforming use
- Would the garage exceed the Ordinance limit of a 25% expansion of a non-conforming use

Staff explained that a variance is required because there is a non-conforming structure on the property. Mr. Kremer said the proposed garage would be 400 square feet. The existing secondary unit is also 400 square feet. The existing home is approximately 1,566 square feet. He explained that the existing legal non-conforming use of the site would be expanded, by the addition of the proposed garage. The request does exceed the Zoning Ordinance 25% expansion threshold thus resulting in the variance application. The Chair asked Mr. Kremer if he had completed his presentation or if he additional comments. Mr. Kremer said that he no additional comments.

Mr. James Faulkner asked if the proposed garage had doors that faced the eastern side of the property. The Board reviewed plans submitted by the Applicant. The plans appeared to indicate that the garage would not be close to the easement behind the property or near the driveway. The plans did not specify the actual garage door placement. Mr. Faulkner asked the Board to consider the requirement of a fence on the easterly side of the property. Given that Mr. Kremer plans to use the easement. Garage doors could be added onto the backside of the garage, to provide access to the roadway easement off of Grove Way. Mr. Faulkner also asked the Board to require that there be no garage doors on the side facing the easement.

Mrs. Lillian Barrett said that she was in agreement with Mr. Faulkner's recommended Conditions.

Mr. Kremer provided additional testimony. Mr. Kremer said that neither Mr. Faulkner or Mrs. Barrett had anything but, a non-exclusive right to the easement. He did not believe the BZA had the authority to mandate Conditions that would deprive him of his property rights. The Conditions proposed by Mr. Faulkner are unacceptable. Under those circumstances he would object. The Chair responded that Mr. Kremer could appreciate the fact that he did not presently have the right to build the garage. This discussion is part of the application process. Mr. Kremer said the BZA was appointed to uphold Zoning Guidelines. The Chair clarified that the Board would make factual findings based on evidence presented, and public testimony. The Chair asked Mr. Kremer to confirm where the entrance of the garage would be located. The submitted plot plan did not show great detail. Mr. Kremer did not have plans to build the garage immediately. Mr. Kremer said that the garage would be near the entrance to the driveway. He did not consider putting doors on the side of the garage that would face the easement. Although it may not be a bad idea, he has yet to think the final design through. A garage is not necessarily limited to one set of doors. In any case he would not preclude the idea of use of the rear of the parcel to exit the property. The Chair reiterated that the determination of the easement access was not in front of the BZA, only the

variance. Member Adesanya asked if the structure was a car port. Mr. Kremer said the structure would be a garage. The Vice Chair pointed out that the Building Department would oversee the final details when the garage is built. The Chair acknowledged the comment but pointed out that the BZA decision could be subject to, and tied to a proposed aspect of the design. The Chair then asked Mr. Kremer if he had additional comments or questions. Mr. Kremer said that he did not.

Mr. Richard Monez testified that he lived at 2441 Grove Way. The easement that was referred to in earlier testimony is behind his home. He has lived on the property all of his life. Access has never been given to all of the residents on Charlene Way. His Grandparents built their home in 1934. The easement was created to allow the Barrett Family to get to their home. No one other than the Barrett Family have used the easement, for the past 60 years. The easement along the backside of his Grandparents' property is now owned by Public Storage. They control that portion of the easement. Mr. Monez said that he was told that Public Storage had not given Mr. Kremer permission to use the easement. Mr. Kremer installed the road in an attempt to gain a perspective easement. After a period of 5 years Mr. Kremer would then gain a permanent easement. There was a property next door to his Grandparent's property that always had a fence. The fence is now torn down. Now that the fence is down Mr. Kremer believes he can access the 800 foot driveway. The drive way was always used by the Barretts, Monzes and the other family that originally lived there. He confirmed there were pipes underneath. The easement is now owned by Public Storage. They did not give Mr. Kremer access. Mr. Kremer says he will not access the easement. However he has built a roadway up to the easement. Mr. Monez also believed that Mr. Kremer would use the side of the garage that would face the easement for access.

Mr. Kremer wanted to return to offer public testimony. The Chair said further testimony regarding the easement was not relevant. The BZA was only considering the variance request.

Mr. Kremer requested to offer additional testimony. The Chair told Mr. Kremer that public testimony would not be re-opened. The Chair reminded Mr. Kremer that she asked him if he had additional comments or questions. He confirmed that he had no additional comments or questions. Public testimony was closed.

The Vice Chair motioned to uphold the staff recommendation of approval respective to Exhibit "A" reviewed at the Hearing. Member Clark seconded the motion. The motion to approve Variance, V-12104 passed 5/0.

The Chair called for a short meeting break at 8:15 p.m. The Meeting resumed at 8:25 p.m.

3. **BILLY & KIMBERLY YATES, VARIANCE, V-12099 and SITE DEVELOPMENT REVIEW, S-2089** – Variance Application to allow reduced parking and two roof signs where otherwise not permitted, and a Site Development Review to allow an addition onto an existing restaurant, (JD's) located at 2837 Castro Valley Boulevard, south side, approximately 390 feet west of Nunes Avenue, unincorporated Castro Valley area of Alameda County, bearing Assessor's Parcel Number: 084A-0017-003-00.
Staff Planner: Pat Anekayuwat.

Staff recommended approval of the application with a modification to Condition #10. The title of Zoning Administrator shall be replaced by, Planning Director. Board questions were as follows:

- Is the Applicant reducing or maintaining the number of required parking spaces
- Was the current parking design set at the time the building was erected, or at a later point
- Is the footprint of the restaurant expanding

- Does the Applicant require a variance to remodel the property
- Is moving or flashing signage allowed

Staff said that the number of seats in the restaurant would not be increased. A variance is required for the roof signs, and reduced parking. The building design does not comply with some of the requirements of the Castro Valley Business District Specific Plan, which is now in effect. The roof signs will be replaced. The current Plan requires 18 parking spaces. Staff was unsure when the building was erected. The Zoning Ordinance could have been in effect. However the parking is considered, non-conforming. The Applicant interjected that the structure was built in 1966. The current 11 spaces will be retained. The parking lot can only accommodate the same number of spots. The spaces will be re-configured to create an accessible space. Restaurant bathrooms will be modified to meet accessibility requirements. Staff recommended that the Board prohibit moving, and flashing signage. However illuminated signage may be allowed with a variance. Public testimony was opened.

The Applicant, Mr. Billy Yates told the Board that he purchased the restaurant 14 months ago. There restaurant is not expanding. The number of seats and parking spaces will remain the same. The remodeling will upgrade the facility, and add an accessible bathroom, and accessible parking space. Four of the spaces in the parking lot will be compact spaces. One space will be accessible. The old roof sign will be replaced. The second, new sign will be placed behind it creating a two sided effect. The overall size and current position will remain. The Chair asked if Mr. Yates had read the staff report. He confirmed that he had. Mr. Yates was in agreement with the Conditions of Approval.

Ms. Jamie Benson of the Alameda County Redevelopment Agency was present. The Redevelopment Agency is funding the façade, and frontage improvement. Parking and signage will be formalized through the variance process. The current roof sign is a, box sign. The proposal is to replace the old signage, and add one new sign. The parapet will not support a large sign. The placement will remain but will be externally illuminated. The goal of the Redevelopment Agency is to make improvements to the building. Although the signage design is not allowed in the Castro Valley Business District Plan, there is no other suitable location for mounting. Small signage could be placed in addition to the roof sign. The goal is not to over sign, but minimize the overall scale of building signage. The Board asked if the new sign would be see from both directions on Castro Valley Boulevard. Ms. Benson confirmed that it would. However a benefit is that the new sign will cover pipes and infrastructure that is currently exposed. The physical T Pee shape of the existing structure is unavoidable. Public testimony was closed.

Member Clark asked in reference to Condition #10 if Public Works Traffic Division had the same requirements as Traffic Engineering. Staff confirmed they were one in the same. Member Clark asked if the Applicant was required to implement Public Work's comments or if the referral response was considered a suggestion. The Chair said that was an important point, as recommendations could end up as Conditions of Approval. Staff said that Public Work's intent is to ensure the driveway remains clear, in the event of future improvements toward the front of the building. Pedestrian ingress and egress should remain unfettered. Public Work's comments are not necessarily meant to become Conditions of Approval. The Vice Chair pointed out that there were conflicting statements in the staff report regarding the number parking spaces. Staff clarified that earlier comments were in response to previously submitted site plans. The Castro Valley General Plan requires that a minimum of 25% of the spaces be compact. The current site plan shows a total of 45.5% compact spaces. An accessible parking stall will also be installed. There are only 11 spaces at the site. Hence the variance request. The Applicant will still be required to comply with Public Works requirements for the path of travel to the accessible stall, and areas in the public right of way. The Board asked staff if the Planning Director or Public Works had final approval of the design of private parking lots, excluding the public right of way. Staff confirmed that the Planning Director had final approval of the private areas. Ms. Benson agreed that Public Works offered recommendations. The Applicant has already met with Public Works. There should not be any issues.

The Chair requested that Public Works Traffic Division be stricken from Condition #10.

The Vice Chair motioned to support the staff recommendation of approval. Condition #3 shall be modified. The Condition shall now read, No moving or flashing illuminated signage shall be allowed. Condition #10, section e., shall be stricken. The title County Zoning Administrator shall be replaced with: the County Planning Director. Member Clark seconded the motion. The motion to approve Variance, 12099 was carried 5/0.

4. **SOLAR DESIGN CA. INC, VARIANCE, V-12100** – Application to allow a six foot side yard where 10 feet is required in conjunction with a residential care facility in an R-S-D-20 (Suburban Residence, 2,000 square foot per Dwelling Unit) District, located at 20531 Forest Avenue, west side approximately 750 feet north of Castro Valley Boulevard, unincorporated Castro Valley area of Alameda County, bearing Assessor's Parcel Number: 084C-0724-079-00. **Staff Planner: Christine Greene.**

The Castro Valley Municipal Advisory Committee recommended approval. Planning staff recommended denial. Board questions were as follows:

- Is the parcel irregular in shape
- Does the grade of the parcel affect the Applicant's design options

Staff responded there is a large area in front of the building. The proposal would alter the architectural design of the building. However the Applicant could build an addition onto the building. Staff did acknowledge that if the setback area were reduced. The size of the sunroom would be impacted. The lot is not irregular in shape. The site is surrounded mostly by multi-unit buildings. Public testimony was opened.

Mr. Harold Eldridge from Solar Design was present representing the Applicant. The proposal is to build a patio enclosure/sunroom onto an existing deck. The request is to have the setback 6 feet from the property line where 10 feet is required. To meet the required 10 foot setback, the sun room would be reduced to a size of 9 feet by 6 feet. The reduced size would defeat the purpose.

When Mr. Eldridge first discussed his proposal with the Planning Department he was told the set back requirement was 8 feet. When he returned with plans Mr. Eldridge was told he had received incorrect information. The setback requirement is 10 feet. At that juncture it was decided the Applicant would apply for a variance. The proposed sunroom would be on the north side of the building. The area is shielded with plants and vegetation. The sunroom would face a neighbor's garage. Mr. Eldridge presented photographs to the Board. There are bedrooms located in the front of the building. Placing the sunroom in the front would result in enclosing the bedrooms and adding a hallway, requiring more permits etc. This building is a senior facility. A sun room at the front of the building may also cause ingress and egress issues. Placement of the sunroom at the side of the building would also be the simplest implementation. Additional questions were as follows:

- Is a variance needed for the deck
- Is the deck enclosed
- Will the elevation of the deck be raised
- What is the current use of the deck

Staff said that the deck was 30 inches from the grade, and attached to the building. The deck does not require a variance. It is considered an enclosed patio. Mr. Eldridge said the landing space is now used as

a storage closet for mops, etc. The sunroom would be constructed on top of the current deck, and allow the residents to feel as if they were outside. The enclosed sun room would also protect residents from inclement weather. The foundation will be upgraded. The deck elevation will not change. The threshold level from the sunroom to the facility will be consistent. This will be safer for the residents. Member Gil asked why the sunroom was not placed on the south side of the property. Mr. Eldridge said the south side is actually the main entrance. A more appropriate location would be on the north side of the building. Member Clark pointed out that the property had already been granted a prior variance for a 7 foot, rear yard setback. Mr. Eldridge acknowledged that fact. However the proposed location is logical choice, due to the reduced rear yard set back. A sun room would be a higher use, and give the residents an enclosed area to relax in. Public testimony was closed.

Member Clark commented that the deck on the other side yard area might be a safer location for the residents to access. The Chair did not believe access would be a factor. Access could be improved, with the proposal. Staff said that the proposal would create a new exit. A stairway would lead onto the side yard.

The Vice Chair thought the shrubbery on the north side of the building may actually block sun light. This is in contrast to the Applicant's stated purpose. A variance would go with the go with the property. The lot is rectangular in shape, with no irregular topography. The Applicant has the option of constructing an addition to the facility that would comply with the Ordinance.

Member Gil said she interpreted the Applicant's presentation to mean that the sun room could provide sun light. In addition the sunroom can provide an outdoor ambiance, without being physically outside of the building.

Member Adesanya asked staff if other Zoning Designations allowed for the alteration of side setbacks with compensating open space. Staff said the R-1 and R-S Districts will also allow for compensating open space. In this case the parcel is Zoned R-S but does not have sufficient open space. Member Adesanya then asked if the Board of Supervisors had the discretion to grant a variance that did not meet the Ordinance. County Counsel said that the BOS would be under the same Zoning Ordinance constraints as the BZA.

The Chair believed the Applicant proposal was the best location for sunroom. The structure is shifted to one side of the parcel. The Vice Chair responded that the Applicant still had other options on site, to build the sunroom. Member Clark said that a sunroom is not a necessity. It may cost more, but the Applicant could build the sunroom onto the front of the building. The Chair then attempted to craft Conditions of Approval that could support the variance request.

Member Adesanya responded that although she could support the variance emotionally. She would not be able to support the application. Member Clark pointed out that the building had been expanded in 1991 by 551 square feet. Therefore the building was changed, and the rear set back reduced. Special circumstances would not be applicable. The Applicant created the situation when they requested the prior variance. She would like to see the residents get a sun room. However the Applicant cannot make the variance findings.

The Chair pointed out that the original foot print of the building was not altered. The Vice Chair said he was conscious of the fact that the site is a residential care facility. However approval cannot be based on that. The variance is related to the property.

Member Gil motioned to uphold the staff recommendation of denial. Member Adesanya seconded the motion. The Chair abstained. The motion to deny Application V-12100 passed 4/0.

APPROVAL OF MINUTES: Vice Chair Peixoto motioned to approve the Minutes of February 13, 2008 with corrections. Member Clark seconded the motion. The Chair and Member Adesanya abstained. The motioned passed 3/0/2.

Vice Chair Peixoto motioned to approve the Minutes of February 27, 2008 with amendments Gil seconded the motion. Motion carried 5/0.

STAFF COMMENTS & CORRESPONDENCE: Staff had no comments.

BOARD'S ANNOUNCEMENTS, COMMENTS AND REPORTS: Vice Chair Peixoto asked staff why Conditional Use Permit C-8271, had not appeared on the Consent Calendar. He asked staff if the business had been operating, as the item has been continued since 2004. Staff said they believe the item was most recently on the February 8, 2008 Consent Calendar. The business is not in operation. The Applicant is awaiting the outcome of the BOS determination. The determination of Outdoor Businesses is supposed to go before the BOS in April.

The Chair announced that she would not be present at the March 26, 2008 Meeting.

ADJOURNMENT: There being no further business, the hearing adjourned at 9:30 p.m.

CHRIS BAZAR - SECRETARY
WEST COUNTY BOARD OF ZONING ADJUSTMENTS