

**MINUTES OF MEETING**  
**WEST COUNTY BOARD OF ZONING ADJUSTMENTS**  
**JUNE 14, 2006**  
**APPROVED JUNE 28, 2006**

The 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.**

**MEMBERS PRESENT:** Members Frank Peixoto, and Dawn Clark.

**MEMBERS EXCUSED:** Chair; Ron Palmeri; Jewell Spalding, Lester Friedman

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

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

1. **RAYMOND WONG / TONY TANG / FONG & FONG, PARCEL MAP, PM – 8605 – and VARIANCE, V-11987** - Application to subdivide one parcel measuring 20,568 square feet (0.47 acres) into two parcels, resulting in median lot widths respectively of 62 feet, six inches and 47 feet, six inches where 80 feet is required in an R-1-B-E-CSU-RV (Single Family Residence, 10,000 square foot Minimum Building Site Area, 80 foot Median Average Width, Secondary Unit with Recreational Vehicle) District, located at 17472 Almond Road, north side, approximately 600 feet southwest of Vineyard Road, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 084D-1250-031-01.
2. **TONY & ALLISON KEAHI, VARIANCE, V-12002** – Application to allow a five foot side yard setback where seven feet is the minimum required with the construction of an attached addition, in an R-1 (Single Family Residential) District, located at 17635 Via Rosas, northwest side, approximately 130 feet, north of Via Aires, unincorporated San Lorenzo area of Alameda County, designated Assessor's Parcel Number: 412-0074-047-00.
3. **PAUL & CHRIS FURLONG, VARIANCE, V-12009** – Application to allow a seven foot high fence where four feet is the maximum, in an R-1-L-B-E (Single Family Residence, Limited Agricultural Uses, 5 Acre Minimum Building Site Area, 300 foot Minimum Lot Width) District, located at 27715 Fairview Avenue, west side, approximately 610 feet south of Oakes Drive, unincorporated Fairview area of Alameda County, designated Assessor's Parcel Number: 425-0500-015-00.
4. **JASON KADO, VARIANCE, V-12012** – Application to allow: a) a 13 foot front yard setback where 20 feet is required; b) a four foot side yard setback where 10 feet is required; c) a two foot setback from the access driveway where 10 feet is required; and d) three feet between buildings where 10 feet is required, with the subdivision of one site containing 0.42 acres into two lots (no new construction is proposed), in the R-S-D-20 (Suburban Residence, 2,000 feet Minimum Building Site Area per Dwelling Unit) District, located at 2516 – 2528 Grove Way, northwest side, approximately 671 feet southwest of Vergil Street, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 416-0040-041-02.
5. **HELEN YANG & KENT LIV, VARIANCE, V-12013** – Application to allow

expansion of a non-conforming (reduced front yard) dwelling with an attached addition, in an, R-1-CSU-RV (Single Family Residence, Conditional Secondary Unit, Recreational Vehicle) District, located at 19204 Garrison Avenue, east side, approximately 190 feet north of Lux Avenue, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 084B-0568-018-00.

6. **LLOYD PEOPLES, VARIANCE, V-12015** – Application to allow construction of an attached carport, resulting in a side yard setback of one and one half feet where five feet is required, in an R-1 (Single Family Residence) District, located at 15895 Via Media, south west side, approximately, 550 feet northwest of Paseo Grande, unincorporated San Lorenzo area of Alameda County, designated Assessor's Parcel Number: 0412-0028-125-00.

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

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

**MEMBERS EXCUSED:** None.

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

There were approximately 16 people in the audience.

**CALL TO ORDER:**

The meeting was called to order by the Chair at 6:00 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. **FUENTES - NAJARRO, VARIANCE, V-11992** – Application to retain an existing secondary unit providing a five foot rear yard where 20 feet is required, in an R-S-SU (Suburban Residence, Secondary Unit) District, located at 234 Cherry Way, north side, approximately 550 feet east of Meekland Avenue, unincorporated Cherryland area of Alameda County, designated Assessor's Parcel Number: 0429-0010-071-00. (To be continued without discussion to July 12, 2006).

**REGULAR CALENDAR**

1. **T-MOBILE USA, CONDITIONAL USE PERMIT, C-8487** – Application to allow continued operation of a wireless communication facility in an “A” (Agricultural) District, located at 6390 Grassland Drive, north east side, approximately 1,200 feet southeast of Sunnyslope Avenue, unincorporated Castro Valley area of Alameda County, designated Assessor’s Parcel Numbers: 085A-1400-001-10 and 085A-1400-001-07. (Continued from May 24, 2006).

The staff recommendation was approval. The CVMAC also recommended approval of the project. Member Friedman noted that the recommended approval was for a period of 7 years. Staff responded the length of a CUP was typically 5 to 10 years. The goal is to have all telecommunication CUP’s expire at the same time. Public testimony was opened.

Staff Secretary, Yvonne Grundy announced that the applicant had been delayed. Mr. Martinez requested the Chair move the item to the end of the meeting calendar. The Chair closed public testimony and put the item at the end of the agenda.

Public testimony regarding Conditional Use Permit, C-8487 was reopened at 7:30 p.m. Mr. Chris Martinez announced that he represented Omnipoint Communications, doing business as T Mobile. Member Friedman said he noticed that the CUP’s for the other two monopolies on the property were set to expire in November 2013. The applicant explained staff requested coinciding expiration dates. T Mobile is willing to comply. The advantage is it facilitates upgrades at the site, allowing communication companies to undergo work at the same time. One current upgrade is the elimination of the upper antenna pole arms. By changing the configuration, it minimizes the visual impact of the site. A new antenna will have a lower emergency frequency and be under warranty. This ensures equipment will remain in working order. Public testimony was closed.

Member Spalding motioned to uphold the staff recommendation of approval. Member Friedman seconded the motion. Motion carried 5/0.

2. **JAVIER PENA, CONDITIONAL USE PERMIT, C-8499** – Application to allow the operation of an alcohol outlet in conjunction with a supermarket (El Rancho Supermercado), in a C-N (Neighborhood Business) District, located at 22291 Redwood Road, west side, north corner of Grove Way, unincorporated Castro Valley area of Alameda County, designated Assessor’s Parcel Number: 415-0100-054-00. (Continued from May 24, 2006).

Staff recommended a continuance to June 28, 2006 as a result of the application being continued at the Monday night CVMAC Meeting. Public Testimony was opened. No one wished to speak. Public testimony was closed. Member Pexioto motioned to continue the application to June 28, 2006. Member Clark seconded the motion. Motion carried 5/0.

3. **RAYMOND WONG / TONY TANG / FONG & FONG, PARCEL MAP, P-8605 and VARIANCE, V-11987** - Application to subdivide one parcel measuring 20,568 square feet (0.47 acres) into two parcels, resulting in median lot widths respectively of 62 feet, six inches and 47 feet, six inches where 80 feet is required in an R-1-B-E-CSU-RV (Single Family Residence, 10,000 square feet Minimum Building Site Area, 80 feet Median Average Width, Secondary Unit with Recreational Vehicle) District, located at 17472 Almond Road, north side, approximately 600 feet southwest of Vineyard Road, unincorporated Castro Valley area of Alameda County, designated Assessor’s Parcel Number: 084D-1250-031-01.

Staff requested the Board continue the application to July 12, 2006 as a result of the application being continued on the June 12, 2006 CVMAC Calendar. Public testimony was opened. No one wished to speak. Public testimony was closed. Member Spalding motioned to continue the application to July 12, 2006. Member Friedman seconded the motion. Motion carried 5/0.

4. **ALFREDO GONZALEZ, VARIANCE, V-11989** – Application to allow construction of a seven foot, six inch high fence where four feet, zero inches is the maximum height allowed, in an “A” (Agricultural) District, located at 22469 Eden Canyon Road, north west side, approximately 0.65 miles north east of Hollis Canyon Road, unincorporated Castro Valley area of Alameda County, designated Assessor’s Parcel Number: 085A-0100-003-00. (Continued from May 24, 2006).

Staff recommended denial. The application had come before the Board on May 24, 2006, and was continued to allow the applicant to be present. Public testimony was opened.

Mr. Alfredo Gonzalez was present but did not wish to speak. Member Spalding asked Mr. Gonzalez if he would like to reconsider testifying, since the staff recommendation was denial. Mr. Gonzalez did request to speak to the Board. Public testimony was re-opened.

The Chair asked Mr. Gonzalez if had read the staff recommendations. He confirmed that he had not. CVMAC was in favor of approval if the fence had a 20 foot set back from the front of the house to the encroachment of the street. The Chair clarified however that CVMAC provides recommendations to the BZA. However Planning Staff recommended denial. Member Spalding asked Mr. Gonzalez if it would like an opportunity to further discuss the application and review findings with staff. Mr. Gonzalez confirmed he would like additional time. Staff requested the matter be on the July 12, 2006 Calendar.

Member Spalding motioned to continue the application to July 12, 2006. Member Friedman seconded the motion. Motion carried 5/0.

5. **FOREST CIRCLE / LLC, VARIANCE, V-11993** – Application to allow construction of a new detached secondary unit two stories, 26 feet in height where one story and 15 feet in height are the maximum; and providing a three foot, six inch side and rear yard where six feet and 20 feet are required; and three parking spaces where four are required, in an R-S-D-20 (Suburban Residence, 2,000 square feet per Dwelling Unit) District, located at 20554 Forest Avenue, east side, approximately 350 feet north of Vincent Court, unincorporated Castro Valley area of Alameda County, designated Assessor’s Parcel Number: 084C-0713-012-01. (Continued from May 10, 2006).

Staff recommended application, V-11993 be continued to July 12, 2006 as a result of the item being continued at the CVMAC Meeting of June 12, 2006. Public testimony was opened. No requests to speak were submitted. Public testimony was closed.

Member Pexioto motioned to continue the application to July 12, 2006. Member Clark seconded the motion. Motion carried 5/0.

6. **DEL RIO/GOMES, VARIANCE- V-12000** – Application to construct an attached addition (garage) providing a six foot side yard where 15 feet is the minimum, in an R-1-L-B-E-CSU-RV (Single Family Residence, Limited Agricultural Uses, 5 Acre Minimum

Building Site Area, Secondary Unit, Recreational Vehicle) District, located at 8216 Crow Canyon Road, west side, approximately ¼ mile north of Norris Canyon Road, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 085-1750-005-22. (Continued from May 24, 2006).

Staff reminded the Board the application had come before them on May 24, 2006, and was continued to allow the applicant to be present. The recommendation was denial of the application. Board questions to staff were as follows:

- What is the total square footage of the proposed attached addition (garage)
- How many vehicles will the proposed garage accommodate
- How many vehicles does the existing garage accommodate
- What is the average garage space required per vehicle
- What is the history of the 1990 boundary adjustment
- Was the boundary adjustment voluntary

Staff reported the proposed square footage of the attached addition was 757 square feet with two openings. Typically, 180 square feet is needed for a car. An average garage is 22 by 22 feet. The door width on one side would accommodate two vehicles, the other side one. The proposed garage would be used to park three cars. The existing two car garage would be used as a shop. After discovering the neighbor's house encroached onto the property a boundary adjustment was completed in 1990. The adjustment was voluntarily and agreed upon by the former owner and the neighbor. Public testimony was opened.

Mr. Gomes showed the Board photographs detailing the position of the driveway. The designer of the project, Mr. Daniel Del Rio then explained that due to the boundary adjustment made by the previous owner a reduced side yard setback of 6 feet remains. His understanding is that an average garage is approximately 250 square feet. The existing garage that will be used as a shop is 407 square feet. In the future they would like to convert the shop into a room as the family grows. Mr. Gomes added the former owner had already converted the garage when he purchased the property roughly in late 1990 or early 1991. Member Spalding asked Mr. Gomes if he had talked with staff about how the conversion of the shop/garage into an occupied, habitable space might affect the analysis of the project. Mr. Gomes said he had not.

Member Friedman asked the applicant if he considered reducing the proposed garage from 757 square feet to 600 square feet the side yard would almost comply with ordinance regulations with a 13 foot side yard. He then asked the applicant the following additional questions:

- What is the square footage of the existing home and garage
- What is the square footage of the existing garage
- What type of shop would the current garage be converted to

Mr. Del Rio responded that the existing home with 3 bedrooms with 1 ½ baths, and garage are 1,700 square feet. Mr. Gomes added that the shop would mostly be for storage and have a work bench. Member Friedman noted the current garage was approximately 400 square feet, and asked Mr. Gomes how the proposed 757 square feet of added garage space would be utilized. If the average required space for one vehicle was 200 square feet, it appeared that 757 square feet was more than adequate for a three car garage. Mr. Gomes said due to the position of the building, and allowance needed to open the garage doors, extra space would be required to maneuver three vehicles. Pulling in and out of the driveway requires a 4 point turn to get into the garage. The width barely fits three cars. Member Friedman asked Mr. Gomes if he considered reducing the proposed garage to 600 square feet. This would allow for a 2

and ½ car garage and a 13 foot side yard. Staff added that some of the extra square footage of the proposed structure is taken up in depth which is 24 feet. An average garage is approximately 20 feet deep. The proposed width is 21 feet, four inches. Public testimony was closed.

Member Spalding asked staff if the project would fall under the Garage Conversion Ordinance since the current garage would be replaced. Staff explained that the applicant is replacing the parking which is what the Zoning Ordinance requires.

The Chair commented that after looking at site plans and photographs it did appear that alternate placement was available in the rear of the property. Staff agreed. The applicant could take out some of the rear grass area.

Member Pexioto motioned to uphold the staff recommendation of denial. The applicant cannot make Tentative Finding #1. There were no special circumstances applicable. Placement options are available on the property. In regard to Tentative Finding #2, the Zoning Ordinance does not require a three car garage or parking to be covered. Member Friedman seconded the motion. Motion carried 5/0.

7. **TONY & ALLISON KEAHI, VARIANCE, V-12002** – Application to allow a five foot side yard setback where seven feet is the minimum required with the construction of an attached addition, in an R-1 (Single Family Residential) District, located at 17635 Via Rosas, northwest side, approximately 130 feet, north of Via Aires, unincorporated San Lorenzo area of Alameda County, designated Assessor's Parcel Number: 412-0074-047-00.

The staff recommendation was approval. The San Lorenzo Village Homes Association recommended approval as well. Member Pexioto asked staff if the proposed addition encroached only on the southeast corner. Staff confirmed that was correct. The addition would be aligned with the current line of the house. Public testimony was opened. The applicants, Tony & Allison Keahi were present but did not wish to speak. Public testimony was closed.

Member Pexioto, motioned to uphold the staff recommendation of approval. Member Clark seconded the motion. Motion carried 5/0.

8. **PAUL & CHRIS FURLONG, VARIANCE, V-12009** – Application to allow a seven foot high fence where four feet is the maximum, in an R-1-L-B-E (Single Family Residence, Limited Agricultural Uses, 5 Acre Minimum Building Site Area, 300 foot Minimum Lot Width) District, located at 27715 Fairview Avenue, west side, approximately 610 feet south of Oakes Drive, unincorporated Fairview area of Alameda County, designated Assessor's Parcel Number: 425-0500-015-00.

Staff recommended denial of the application. Member Spalding recused herself. Member Friedman noted that it appeared the request for the fence was to keep deer out of the yard. He questioned the effectiveness since deer can easily jump a 7 foot fence. Member Pexioto asked if the front portion of the fence was directly on the front property line. Staff explained the road right of way was directly in front of the house. The fence sits back slightly on the down slope in front of the home. The seven foot portion of the fence is actually the gate area in the middle of the driveway. The Zoning Ordinance allows four feet. Public testimony was opened.

Mr. Paul Furlong said he did not understand the staff report. The recommendation was denial however Conditions of Approval were included. The Chair explained that the BZA is required by law to make

findings when deciding applications. The staff recommendation was denial. However the Public Hearing forum was Mr. Furlong's opportunity to present testimony that might convince the BZA otherwise. Mr. Furlong said he settled on a six foot fence because several properties in the neighborhood have six foot plus fences. To his knowledge they are used to contain foliage and flowers, not to keep out deer. What makes his property different is the line of sight from the street. The fence would not be an eyesore. At the driveway level the line of sight is about four feet. The perimeter is six feet.

Member Clark said she had visited the property and noticed most of the vegetation was on the sides of the property going toward the back. She asked if Mr. Furlong considered making the fence four feet at the front, and six foot around the perimeter. Mr. Furlong said a four foot fence would not meet his needs or be a good investment since the deer enter at the front of the property. Member Friedman asked staff if other homes in the area had fences in excess of six feet would that be in conflict with staff's Tentative Finding #2, granting the application would constitute special privilege. Staff confirmed that fences exceeding zoning requirements were present in the neighborhood. Only one variance is on record for fence height, Variance, V-10125. Any other fences that exceed the height are either non-conforming or illegally constructed.

Mr. Furlong's immediate neighbor, Mr. Soren La Force said he came to speak to the Board on his own volition. He thought the fence would have a positive effect in terms of esthetics. He pointed out that a fence directly across the street with a height of four feet had more of an esthetic impact due to the up sloped topography. There is another stone fence to the north of the Furlong property that exceeds the maximum height, although it is quite attractive. The stone fence presents more of an obstruction of line of sight on the street as opposed to the proposed fence. Mr. La Force did not know if the fence would be a deterrent. He too had seen deer jump surprisingly high and his landscaping has been decimated as well. In the morning he can also see a large number of deer racing through the yard. The area is infested and there have been a number of road kill deer. He admitted it was speculation on his part but anything that might deter deer and reduce the impact would be helpful. Mr. Furlong closed and asked the Board to reconsider the staff recommendation of denial. The fence would have a positive impact. Public testimony was closed.

The Chair questioned staff about the inconsistency of granting, V-10125 for fence height, due to topography. If the slope on this property does create a special circumstance why would Tentative Finding #2 constitute special privilege. Staff responded that in Tentative Finding #1 regarding this application, the height of the fence is mitigated by the slope of the parcel. Therefore the fence does not appear as high from the street as it would if the property were flat. The Chair asked for clarification if the topography affected the height of the fence. Staff said no, just the appearance of the height as seen from the street.

Member Pexioto commented that he hesitated because he had a problem with the fact that a property zoned "A" with five or more acres would be limited to a four foot fence. For example the fact that a property way out on Mines Road would need a variance for fence height is not logical. However the Zoning Ordinance limits front fences to four feet. As a result he was in support of Tentative Finding #2, granting the application would constitute a grant of special privilege.

Member Pexioto motioned to uphold the staff finding of denial. Member Friedman seconded the motion. Member Spalding did not participate in the decision. Motion carried 4/0.

9. **JASON KADO, VARIANCE, V-12012** – Application to allow: a) a 13 foot front yard setback where 20 feet is required; b) a four foot side yard setback where 10 feet is required; c) a two foot setback from the access driveway where 10 feet is required; and d) three feet between buildings where 10 feet is required, with the subdivision of one site

containing 0.42 acres into two lots (no new construction is proposed), in the R-S-D-20 (Suburban Residence, 2,000 feet Minimum Building Site Area per Dwelling Unit) District, located at 2516 – 2528 Grove Way, northwest side, approximately 671 feet southwest of Vergil Street, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 416-0040-041-02.

The staff recommendation was approval. CVMAC was in favor of approval as well. Board questions for staff were as follows:

- How wide is the existing driveway
- What is the required width for a shared driveway
- Is there new construction proposed at this time
- Is the age of a building a special circumstance under California Law and Zoning Ordinance
- What is the zoning density if the parcel were sub-divided
- When did the boundary adjustment on the property go into effect

Staff responded that the width requirement is ten feet per vehicle, 20 feet for a shared driveway. The existing driveway is over 20 feet. No new construction will take place. The applicant proposes to move the parking currently at the front of the property and install landscaping. A portion of an existing garage that would straddle the proposed property line would require removal. All other aspects of the property would remain unchanged. The existing units have been in place since 1950 which makes them non-conforming. Due to the non-conforming setbacks a variance would be required prior to subdividing the property. The R-S-D-20 Zoning requires that each unit be a minimum of 2,000 square feet. The proposed lots would have a density of 3,083 square feet per unit. The parcel would be subdivided into two lots, each with a single family residence and duplex. County Counsel responded that the age of a building could qualify as a special circumstance under State Law or Zoning Ordinance. Public testimony was opened.

Mr. Jeff Nelson, spoke on behalf of the applicant, Jason Kado. Mr. Nelson gave a history of the property. In the capacity of Realtor he has sold the property four times in the past five years. Originally the property was one of the worst on Grove Way. Each subsequent owner has improved the property. As a result each unit has been completely redone. Mr. Kado's goal is to subdivide the property to provide affordable housing stock. The configuration of the parcels allows someone to live in the single family unit while renting out the duplex. The rental income of \$1,150 per month could be used as an off-set, allowing a potential homeowner to qualify for a home loan of \$250,000 with a small down payment. It would also help maintain Grove Way because the parcels would be owner occupied. Additional landscaping would be added to the front of the parcel, providing ambiance. The property is unique in that each unit is already individually metered for gas, water and electrical further supporting the single family feeling of the site. Public testimony was closed.

Member Spalding recommended that, L #1, the Planting Plan for the project be listed in the Pre-Hearing Recommendation for clarity.

Member Pexioto stated, granting a variance for financial gain would constitute a special privilege. There is nothing wrong with the property in its current state.

Member Spalding posed a question to staff. She wanted to explore the general concept of inconsistency between Tentative Findings. For example, applications have come before the Board where special circumstances were applicable to the parcel. In conjunction, a second finding that granting of the application would constitute a special privilege. Why would granting a variance be special privilege, if special circumstances are shown to be present.

The Chair weighed in and said in this case, he did not believe Finding #1 was supported at all. The rectangular shape of the property is not a special circumstance. Properties with the same shape and similar dimensions are present throughout the area.

Member Pexioto motioned to deny the application. Tentative Finding #1 shall be modified. There are no special circumstances applicable to the property as other rectangular shaped properties exist in the area. Tentative Finding #2 shall be modified to reflect, granting of the application will constitute special privilege in violation of State Law (Orinda Association v. Board of Supervisors (1986). Financial hardship, community benefit, or the worthiness of a project are not considerations in whether to approve a variance.

Member Spalding asked staff if the project would fall under any County affordable housing policy in conjunction with the update of the Eden Plan. Staff said a County Program was in existence that required consideration of median income for rents and sales prices. This particular project was not applying under the auspices of that program.

Member Spalding seconded the motion. Although she commented in a sense she disagreed. Development was not only for economic gain but development should also be facilitated to benefit the community. However that particular issue was out of the realm of the BZA. Member Clark voted in favor of the motion. The units have been in place since the 1950's, and no new construction is proposed. The project could provide new opportunities for home ownership. Motion of denial carried 4/1.

**APPROVAL OF MINUTES:** Member Pexioto motioned to approve the Minutes of March 22, 2006 with submitted corrections. Member Friedman seconded the motion. Motion carried 5/0.

Member Pexioto motioned to approve the Minutes of May 24, 2006 with submitted corrections. Member Friedman seconded the motion. Member Spalding abstained. Motion carried 5/0/1.

**STAFF COMMENTS & CORRESPONDENCE:** The cost of processing carports and garage conversions would be charged at a flat rate. Applicants that were over charged will receive a refund.

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

**BOARD'S ANNOUNCEMENTS, COMMENTS AND REPORTS:**

Member Spalding asked staff what were the zoning requirements for off street parking for R-1. Staff said that R-1. Single Family Residence, required one guest parking space, Multiple Family Zoning does not require additional on street parking. However Planning does try to ensure applicants take that into consideration. Regarding Condo Guidelines, parking is calculated based on size and square footage per unit.

Member Friedman expressed concerns about the Board Letter written in response of the appeal of the BZA decision regarding, Conditional Use Permit, C-8469. He believed the letter did not reflect a summary of the BZA's decision but advocacy of Tony and Ted's Liquor. The applicant did not present evidence as to his rights and status. Member Friedman was concerned that all of the issues raised during prior BZA Hearings on C-8469, and the veracity by the applicant at the hearings would not be given appropriate consideration at the June 15<sup>th</sup>, Board of Supervisor's Meeting.

The Chair said he reviewed the initial draft and spent a considerable amount of time articulating the BZA's considerations with Assistant Planning Director, Steve Buckley. The BZA's determination after hearing incontrovertible evidence and applying Zoning Ordinance 17.52.695 was that the non conforming status was lost. The exceptions do not apply to the applicant. The break in continuous use was for more than 30 days. The alcohol sales license was surrendered several years prior to the permit application. This shows intent by the applicant not to continue the use. Diligent pursuit of building repairs for more than 180 days did not apply since the 180 days starts from the time of discontinuance of the use.

The Chair said staff did not clarify that the BZA was given the wrong Zoning Statute by staff when the application originally came before them in March. This resulted in an erroneous image of Board of Zoning Adjustments being conveyed to the Board of Supervisor's. Similar issues occurred when the BZA was first formed. The Chair hoped this was not a return to that prior phase.

Member Spalding recommended staff develop a procedure. When the BZA is given inaccurate information and makes findings that satisfy the Zoning Ordinance, applications that are appealed to the Board of Supervisors should be re-heard by the BZA for a review of new evidence.

**ADJOURNMENT:**

There being no further business, the hearing adjourned at 8:17 p.m.

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**CHRIS BAZAR - SECRETARY**  
**WEST COUNTY BOARD OF ZONING ADJUSTMENTS**