

MINUTES OF MEETING
WEST COUNTY BOARD OF ZONING ADJUSTMENTS
OCTOBER 10, 2007
(APPROVED NOVEMBER 14, 2007)

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: 1:00 p.m.

MEMBERS PRESENT: Vice Chair; Frank Peixoto.

MEMBERS EXCUSED: Chair; Jewell Spalding; Members, Kathy Gil, and Dawn Clark.

OTHERS PRESENT: Phil Sawrey-Kubicek, Senior Planner

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

1. **MARYANN MILLER NOVAK CONDITIONAL USE PERMIT, C-8562** – Application to allow operation of a telecommunications facility, in the R-1-RV (Single Family Residence, Recreational Vehicle) District, located at 2301 Miramar Avenue, north side of west of Crest Avenue, unincorporated San Leandro area of Alameda County, bearing Assessor's Parcel Number: 080A-0191-034-04.
2. **BRIAN LESEUR, VARIANCE, V-12071** – Application to subdivide one site into two parcels (with a boundary adjustment) resulting in a zero foot side and a 16 foot, front setback where 10 feet, and 20 feet setbacks respectively are required, in an R-1-CSU-RV (Single Family Residence, Conditional Secondary Unit, Recreational Vehicle) District, located at 19223 Carlton Avenue, west side, approximately 380 feet south of Massachusetts Street, unincorporated Castro Valley Area of Alameda County, Designated Assessor's Parcel Number: 084B-0441-043-00.
3. **IBC BUILDERS / PRASAD, TENTATIVE PARCEL MAP, PM-9516 and VARIANCE, V-12073** - Application to subdivide one parcel measuring approximately 43,560 square foot (1.0 acre) parcel into four lots allowing a six foot side yard where a 10 foot side yard is required in a R-1-B-E (Single Family Residence, per Fairview Plan) District, located at 23330 Maud Avenue, east side, approximately 300 feet south of Pickford Way, unincorporated Fairview area of Alameda County, Assessor's Parcel Number: 417-0210-67.
4. **MICHAEL JUNG, VARIANCE, V-12081** - Application to allow construction of a new single family dwelling with a height of 30 feet where 25 feet is the maximum allowed, in an R-1 (Single Family Residence) District, located at Aurelia Way, east side, approximately 220 feet north of Midland Road, unincorporated San Leandro area of Alameda County, Designated Assessor's Parcel Number: 079-0010-020-00.
5. **MICHAEL JUNG, VARIANCE, V-12082** - Application to allow construction of a new single family dwelling with a height of 30 feet where 25 feet is the maximum allowed, in an R-1 (Single Family Residence) District, located at Aurelia Way, east side, approximately 220 feet north of Midland Road,

unincorporated San Leandro area of Alameda County, Designated Assessor's Parcel Number: 079-0010-004-00.

6. **MAURICE DAWSON, VARIANCE, V-12084** - Application to allow a two foot side yard setback where five feet is required, in an R-1-RV (Single Family Residence, Recreational Vehicle) District, located at 16715 Rolando Avenue, southwest side, approximately 280 feet northeast of Winding Boulevard, unincorporated San Leandro area of Alameda County, Designated Assessor's Parcel Number: 080A-0212-021-00.
7. **MIKE BOCKS, VARIANCE, V-12085** - Application to legalize an existing secondary unit with: 1) three parking spaces where four are required; 2) a zero foot setback from the driveway where 10 feet is required; and 3) a two foot side yard setback where five feet is required, in an ACBD Specific Plan – RC (Ashland and Cherryland Business District Specific Plan – Residential Commercial) District, located at 330 Lewelling Boulevard, south side, approximately 50 feet west of Tracy Street, in the unincorporated Ashland area of Alameda County, Designated Assessor's Parcel Number: 413-0097-021-00.
8. **JOHN KIM, VARIANCE, V-12086**, Application to allow construction of an attached garage with a three foot side yard setback where five feet is required in a "R-S-CSU-RV" (Suburban Residential, Conditional Secondary Unit, Recreational Vehicle Regulations) District, located at 4663 Heyer Avenue, south side, approximately 830 feet west of Center Street, in the unincorporated Castro Valley Area of Alameda County, Designated Assessor's Parcel Number: 84C-0701-004-04.

REGULAR MEETING: 6:00 p.m.

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

MEMBERS EXCUSED: None.

OTHERS PRESENT: Phil Sawrey-Kubicek, Senior Planner; Eric Chablis; County Counsel; 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 6:05 p.m.

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

OPEN FORUM: Open forum is provided for any members of the public wishing to speak on an item not listed on the agenda. Each speaker is limited to three (3) minutes.

No one requested to be heard under open forum.

CONSENT CALENDAR:

1. **ARNOLDO HERNANDEZ / PETTIT, VARIANCE, V-11978 and SITE DEVELOPMENT REVIEW, S-2051**– Application to allow the conversion of an existing attached one car garage to living space and provision of two uncovered spaces in the rear, in an R-1-CSU-RV (Single Family Residential) District, located at 4421 Alma Avenue, south side, approximately, 770 feet west of Brickell Way, unincorporated Castro Valley area of Alameda County, designated Assessor’s Parcel Number: 084C-0820-014-00. (Continued from September 27 and November 8, 2006; January 10, March 28, June 27, July 25 and September 12, 2007; to be continued to December 5, 2007).
2. **IBC BUILDERS / PRASAD, TENTATIVE PARCEL MAP, PM-9516 and VARIANCE, V-12073** - Application to subdivide one parcel measuring approximately 43,560 square foot (1.0 acre) parcel into four lots allowing a six foot side yard where a 10 foot side yard is required in a R-1-B-E (Single Family Residence, per Fairview Plan) District, located at 23330 Maud Avenue, east side, approximately 300 feet south of Pickford Way, unincorporated Fairview area of Alameda County, Assessor’s Parcel Number: 417-0210-67. (To be continued to October 24, 2007).

Mr. A. Wells submitted a request to speak regarding Variance, V-12073. The Chair told Mr. Wells the item can be removed from the Consent Calendar and put at the end of the Regular Calendar. Testimony can be submitted. However no action will be taken on the item. Mr. Wells said that he would return to speak on October 24, 2007.

Member Clark motioned to accept the Consent Calendar as submitted. Vice Chair Peixoto seconded the motion. Motion carried 4/0.

REGULAR CALENDAR

1. **MARYANN MILLER NOVAK CONDITIONAL USE PERMIT, C-8562** – Application to allow operation of a telecommunications facility, in the R-1-RV (Single Family Residence, Recreational Vehicle) District, located at 2301 Miramar Avenue, north side of west of Crest Avenue, unincorporated San Leandro area of Alameda County, bearing Assessor’s Parcel Number: 080A-0191-034-04.

Staff requested a continuance to November 14, 2007. There are issues regarding the temporary tower at the site with pending Code Enforcement action. The item will then go to CVMAC for a second time. Public testimony was opened. There were no requests to speak. Public testimony was closed.

Vice Chair Peixoto asked staff if there would be two carriers at the site. Staff explained that T Mobile was the original carrier. A permit for a permanent cross structure would have to complete by March 2009. Thus far the original applicant has not moved forward. Metro PCS would like to co-locate but their application is contingent upon the status of the T Mobile application. Staff will update the Board on progress at the November 14, 2007 Hearing.

Member Clark motioned to continue the application to November 14, 2007. Member Gil seconded the motion. Motion carried 4/0.

2. **RUBEN SOTO, VARIANCE, V-12046** - Application to allow a driveway located five feet from the existing dwelling, and five feet from the new dwelling

where 10 feet is required with the construction of three (3) dwelling units, in an R-S-D-35 (Suburban Residence, 3,500 square feet per Dwelling Unit, Minimum Building Site Area) District, located at 21587 Banyan Street, west side, approximately 450 north of Willow Avenue, unincorporated Fairview area of Alameda County, designated Assessor's Parcel Number: 429-0046-056-00.

Staff recommended a continuance to October 24, 2007. The Applicant talked with the planner, and has revised plans to submit. It may also be necessary to re-notice the application. The Chair asked staff to correct the location of the site to reflect the Fairview District, not the Cherryland District. Public testimony was opened. No one offered public testimony. Public testimony was closed. Vice Chair Peixoto motioned to continue the application to October 24, 2007. Member Clark seconded the motion. Motion carried 4/0.

3. **JOE & MARIA MENEZES, VARIANCE, V-12072** - Application to allow construction of a residential addition, providing a building height of 28 feet where 25 feet is the maximum allowed, in an R-1-B-E (Single Family Residence, 6,000 square feet Minimum Building Site Area, 60 foot Minimum Lot Width, 70 foot Side Yard) District, located at 3462 Bridle Drive, north side, approximately 100 feet north of Cattle Avenue, unincorporated, Fairview area of Alameda County, designated Assessor's Parcel Number: 425-0090-015-00. (Continued from June 27 and August 22, 2007).

Staff reminded the Board that the application had come before them on June 27 and August 22, 2007. The item was continued to allow the Applicants to complete a visual study of the proposed addition, based on a surveyor's measurements. As of the hearing, no new information had been submitted. The staff recommendation was approval. Public testimony was opened.

Michelle Menezes submitted materials to the Board. A surveyor came to the property and confirmed that the proposed roof pitch would be in compliance with the County Ordinance. The composite shows that the height is actually 1 foot lower than the maximum height. The surveyor also took a measurement from the neighbor, Ms. Armstrong's property. The composite is eye level facing the neighbor, on the east side. It confirms that Ms. Armstrong would not lose her view. Only a small section of the trees, she currently sees. The roof pitch must be at 12:4 in order for the manufacturer to guarantee the roof. Mrs. Menezes compared the newly submitted materials to the photographs, and composites submitted by Ms. Armstrong. Mrs. Menezes believed there was some distortion, which affects the perception of the impact to the view. The only design recourse Mrs. Menezes would have is to build an L shaped structure. This would have more of a pronounced impact on views. Mrs. Menezes reiterated, Unincorporated Alameda County does not have a View Ordinance. Her family's goal is to improve the neighborhood, and improve their home. They also want to respect the neighbor's perspective. Mrs. Menezes said she has lived in the home for 25 years. Her husband and his family have lived in the home for 45 years. She would appreciate the Board approving the project, and wished to move forward. The Chair asked if the neighbors had an opportunity to review the composite. Mrs. Menezes testified they were only able to get the surveyor on Saturday, and did not have an opportunity to give the composite to the neighbors.

The neighbor of the Meneze's introduced herself. Ms. Judy Armstrong said she was happy to see that the Menezes conducted the study. She asked if the surveyor had entered her property to take measurements for the composite. The Chair responded that generally a surveyor does not have to get permission to enter a property, to conduct a land survey. Ms. Armstrong referred to the composite. Based on a cursory look at the submitted materials, she pointed out that the area that will be impacted is larger than the width of 2 trees. The proposal would cover her view of the, costal range mountains. She told the Board she would not recount all of the objections she raised at prior hearings. However Ms. Armstrong asked the

Board to do the right thing. The Chair assured Ms. Armstrong that the Board would continue to ask questions regarding the application.

Mr. Menezes confirmed a surveyor came to the site. He and the surveyor went to Ms. Armstrong's home at 9:00 a.m. to meet with her. Ms. Armstrong was not home but the surveyor took measurements to complete the composite. Ms. Armstrong interjected from the audience and again asked if they entered her property without permission. She wanted to know why the Mr. Menezes did not leave a note. The Chair told Mr. Menezes that as a courtesy, he could have called the neighbors prior to taking the measurements. He could also have given the composites to the neighbors on Monday, or Tuesday. However, in general a surveyor has the right of passage on private property when conducting a land survey. Mr. Menezes and the surveyor also went to the next door neighbor's home. Ms. Marisal was not at home but her daughter allowed them to measure. Mr. Menezes explained Saturday was the first day they were able to meet with the surveyor. They had contacted several surveyors, and found only one who was willing to work with them. As he had to have the composites prior to the meeting, he did not want to delay the surveyor from taking measurements.

Mr. Menezes continued and said that he had not been contacted by the neighbors. He was unfamiliar with the person the neighbors mentioned, named Paul. Mr. Menezes questioned why the opposition letters submitted, had not been signed. He posed the question of their validity, to the Staff Planner. Referring to the composites, he said the only property that would be affected is the Marisal's home. That would only happen if an L shaped design, was employed. This property is next door. Ms. Armstrong's house would not be affected by the project. The current proposal would not obstruct the entire view of Ms. Armstrong. Only the view toward the Hayward Shoreline would be slightly blocked. The balance of the view out to the San Francisco Bay would be clear. The Chair asked for clarification regarding the photo taken on October 9, 2007. When compared to other photos taken at different times of day, the trees appear to be different. Mr. Menezes explained that the composites were made with the original photographs. The surveyors used his measurements, and the original photographs to make the composites. That is why the trees look like they are at a slightly different angle. The measurements are accurate. The surveyor then took, 2 additional photographs marked A and B. Photos A and B, taken by the surveyor also confirm only a small portion of the Hayward Shoreline obstructed. The view toward the San Francisco Bay is clear. The Chair then asked the Applicant to clarify the location and the angles, of a photograph that appeared to be taken on a clear day. Mr. Menezes explained the photograph was taken from the sidewalk in front of Ms. Armstrong's home. It shows there is a slight obstruction of the Shoreline to the right. However to the left there is a complete view of the San Mateo Bridge, and the entire Bay.

Ms. Armstrong said in rebuttal testimony that she had a panoramic view from her living room. If the Meneze's project is approved, she will lose 30% of the view. The Chair asked Ms. Armstrong to view the composites and give her opinion as to their accuracy. Ms. Armstrong said that a view is 3 dimensional, not flat. She will see the Applicant's home from her hers. She did not believe the interpretation was accurate, or fair. She is not against improving the neighborhood, but would like to have the neighbors involved. She submitted the letters to the Planning Department, and assured the Board they had signatures. In addition the neighbor who lives behind her home is not happy with the proposal either. Public testimony was closed.

Vice Chair Peixoto motioned to adopt the staff recommendation of approval. Regarding Finding #1 Special Circumstance: Yes, there is a slope present on the property. In reference to Ordinance 17.52.090, if the property were 2 feet wider, the Applicant could have a 27 foot high roof without a variance. Regarding Finding #2. Special Privilege, No, Approving the variance would not be a grant of special privilege, as other properties with slope would be given the same consideration. Regarding Finding #3. Will granting the application be detrimental, No granting the application would not be detrimental due to

the slope of the parcel. As the project relates to neighboring views, Alameda County does not have a View Ordinance. The Chair asked staff if there was consideration in the near future regarding a View Ordinance. Staff confirmed there was not. The Chair said she was also concerned that the Applicants did not meet with the neighbors, to review the staff report and composites. The Applicant only made one attempt to contact the neighbor by knocking on the door. This was a few days prior to the hearing. The motion died due to lack of a second.

Member Clark said she did not believe the Applicant could make Finding #3. Will granting the application be detrimental: Although there is no View Ordinance, surrounding property values may be affected as a result of the impact to their respective views. The Chair acknowledged that view can add value, to a property. The Vice Chair pointed out that the BZA could not make findings based upon the financial impact to the applicant. The Chair responded that they could not consider financial burden to the applicant. However could the BZA consider the financial impact of a variance, if that variance had a financially detrimental impact to value of neighboring properties? County Counsel said that may be a consideration. However the BZA would need to consider, evidence. The Chair responded this proceeding was not a trial. The neighbor has presented testimony. In addition this has not been the first time the matter has been before the Board. Other neighbors offered testimony at past hearings. Counsel responded that a conclusory argument could be made by the Applicant, property values would be increased by the remodeling. In the end, the BZA will have to make that determination. Member Clark thought the neighbor made a strong argument that their quality of life will be affected. Looking at a building is not as tranquilizing, as a view. Vice Chair Peixoto referred to California Statute 6.59.11 Open space: Variances shall only be granted when special circumstances are applicable to the property. Including the size, shape, topography, location or surroundings, or the strict application of the property, of such privileges. The Chair asked the Vice Chair which Finding he believed applied to the Statute. The Chair said that the Statute typically applied to Finding #1. Vice Chair Peixoto said he related the Statute to "view". A view relates to "open space", retaining open space would allow for "view". The Chair responded that, if that was the Vice Chair's argument, then the Statute would apply to Finding #3. The Vice Chair responded that in this case, the Open Space Statute would not apply to Finding #1. The Chair reviewed the Statute, and pointed out that it was probably a Government Code. The Code is 10 years old, and perhaps there may have been updates. In any case there had been no second to the Vice Chair's motion of approval. The Chair asked if any other Board Members were prepared to make a motion. Member Gil said she would like to ask the Applicants if they could reduce the roof line to a height of 25 feet. The Chair re-opened public testimony.

The Chair asked Mrs. Menezes if the roof line could be reduced to 25 feet, thereby creating a flat roof. Michelle Menezes testified that the roof manufacturer would not warrantee the roof for leaks if it does not meet a minimum pitch of 12:4. A reduced height would result in a flat roof. The home is designed with ceiling heights of 8 feet, which is the lowest height possible. With 16 feet allowed for ceiling height, only 7 feet is left in which to create pitch. The property also has a slope that must be overcome. The proposed height of 28 feet is the lowest possible, for the design. Due to the slope of the lot, the only other design option is an L shape in the backyard area. The backyard is located on the eastern portion of the lot, and is on higher ground. The L shape design could rise to a height of 25 feet, and would not require a variance. However that design would have more of a pronounced impact on the neighboring homes. Including, eliminating neighbor's views toward the San Francisco Bay. The neighbor, Ms. Armstrong will retain more of a view, with the current design. Mrs. Menezes said the homes in the area with flat roofs have developed leaks, and have required replacement. In addition a flat roof does not allow room for space heaters, duct work etc. Member Clark asked what was the depth of the addition. Mr. Menezes then returned to testify. He clarified that the proposed design would not extend out to the rear of the property. The addition would be built upward, and retains the footprint of the existing home. Public testimony was closed.

The Chair pointed out that if the imprint were extended further back, into the lot. There would be even more of an impact on views, a significant impact. The Chair handed the gavel to Vice Chair in order to clear her throat. The Vice Chair continued to lead Board discussion. Member Gil said she was a stickler for the Ordinance. However in this case a portion of the view will be obscured, regardless of how the Applicants proceed. It is a shame that a 25 foot roof height cannot be met with this design. Member Clark said she was conflicted. In this case all of the parties involved seemed to be nice hard working people, trying to do the right thing. She is concerned that Ms Armstrong will be impacted more if the Applicant were to exercise the design option that does not require a variance. In that case, Ms. Armstrong would have no recourse.

Vice Chair Peixoto said his perspective was that when you buy property, and lot next door is vacant. There is no guarantee as to what will happen on the vacant lot, in the future. Especially with sloped lots. Single or multi level designs might be employed by property owners. Based on a similar home he saw during his site visit. This home had a roof that appeared to be twice the height of the Meneze's proposal. Reviewing the surveyor's perspective, it does not appear that the view blocked will be extreme. The Chair returned to the meeting, and the gavel was returned. The Chair acknowledged that the proposed design would obstruct some of neighbor's views. However what is more important is the fact that the design which does not require a variance will have much more of an impact to view. The neighbor Ms. Armstrong could, appeal any decision made by the BZA to the Board of Supervisors. Ms Armstrong could present any additional information and contrary evidence, at that time. However the Chair hoped that the Menezes and the neighbors could meet, and come to a mutual agreeable conclusion about what portion of the view would be visible. Vice Chair Peixoto pointed out that the project as proposed would still require a variance. The Chair acknowledged that fact. However one option may have more of a negative impact on the neighbors, as opposed to another. The Chair asked staff what would happen if the BZA Members did not put forward a motion. Staff referred to the Zoning Ordinance. The Planning Director has the ability to forward the application to the Planning Commission, if a decision cannot be reached. If the application received a passing approval, or denial motion, either decision could be appealed. An appeal would be heard by the Board of Supervisors. The Chair passed the gavel again to the Vice Chair.

Member Spalding motioned to uphold the staff recommendation of approval. She recommended the Applicant instruct the contractor that if there was any flexibility, to error on the side of reducing the height. The Vice Chair said he would like to make a motion as well. Member Spalding asked County Counsel for a recommendation. Counsel said the gavel could be passed to another Board Member. Acting Chair Peixoto the, handed the gavel to Member Clark. Vice Chair Peixoto seconded the motion. Acting Chair, Clark called for the vote. Member Gil and acting Chair Clark were not in favor of approval. The Members votes resulted in a tie. Two Members were in favor of approval, and two Members were not in favor of approval of the application. The Board of Zoning Adjustments was not able to reach a determination, regarding V-12072. As a result staff will refer the application to the Planning Commission.

4. **PATRICK LOVE, VARIANCE, V-11982** – Application to allow a garage conversion with on-site parking in the side yard, in an R-1-SU-RV (Single Family Residence, Secondary Unit, Recreational Vehicle) District, located at 3773 Cottage Court, north side, approximately, 284 feet west of Parsons Avenue, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 084D-1329-017-00. (Continued from April 12, May 24, July 12, July 26, September 27 and November 8, 2006, January 10, March 28, June 27, July 25 and September 12, 2007).

The application request is for a garage conversion, thereby locating the parking space, encroaching 13

feet into the required front yard. The staff recommendation was denial. Board Members asked staff how the Castro Valley Municipal Advisory Council vote broke down by Council Member. Staff responded the CVMAC tied in a 3 to 3 vote. Staff did not have additional information as to the vote of each Council Member. Initial questions to staff were as follows:

- Would the applicant like to continue the application until there were 7 CVMAC Members
- Has a similar application been granted by the BZA
- Would an easement satisfy the parking requirement
- Would the neighbor of the applicant be willing to grant an easement

Staff said that at present the CVMAC has 6 Members. The Applicant wished to move forward to the BZA, and proceed with the application process. A Site Development Review for a garage conversion was granted by the BZA, last month. The property is located on the same street. The property met the requirements for parking, and all of the requirements of the Garage Conversion Ordinance. The BZA granted the Site Development Review. Variance, V-11982 does not meet the parking requirements of the Garage Conversion Ordinance. The Applicant cannot provide the required parking space outside of the front yard setback. Member Clark asked if the Applicant could meet the parking requirement with an easement. Staff was unaware if the Applicant's neighbor is willing to grant a permanent easement. Staff can confirm easement information with the Applicant. Public testimony was opened.

Mr. Patrick Love told the Board he has lived at 3773 Cottage Court for 25 years. The garage had already been converted when he purchased the home. Mr. Love submitted a letter from his neighbor. Confirming the garage had been converted, when the neighbor moved in. This was 5 years prior to Mr. Love purchasing the home. Mr. Love told the Board he differed with the staff evaluation of the application. The staff report states in Planning Considerations that the request is to extend, 13 feet into the setback. Mr. Love clarified that his request is to extend, 5 feet into the setback. Mr. Love then referred to Bullet #5 on page 3 of the staff report. The report states there is an option to move the garage, 5 feet toward the rear. If the garage were moved 5 feet into the rear, this would still set the garage 8 feet, into the setback. Mr. Love clarified his request is to extend 5 feet into the setback. Another option posed by Planning Staff, is to add a second story to the home. Mr. Love then pointed out a discrepancy in the description on the Meeting Agenda. The notice he received had a different description. Mr. Love said his application had been in process for a long time. The project description in the Meeting Agenda is for on-site parking in the side yard. Mr. Love clarified that the request is to, extend 5 feet into the front setback to provide the on-site parking. Mr. Love said he can also provide parking on the side yard. He and his neighbor have a reciprocal, verbal easement agreement. The easement agreement allows each property owner to use 5 feet of one another's property. This easement extends from the backyard fence, all the way down to the street. Mr. Love said he created the easement with his neighbor on the recommendation of Senior Planner, Mr. Sawrey-Kubicek. Mr. Love told Board Members he and his neighbor discussed the easement. They agreed that as long as one another lives in their respective homes. The easement arrangement will stand until one, or both of the parties dissolve the agreement. Mr. Love said they did not discuss what might occur if one of the parties moved from their homes, or one party passes away. However neither has plans to move. His neighbor is in the process of expanding his home.

The Chair asked the following questions:

- Does an easement go with the land
- Is the easement between Mr. Love and his neighbor, a recorded easement

Mr. Love said the easement was recorded between the two parties. They plan to keep the agreement as long as they each live in their homes. The only stipulation is that neither put a boat on the easement area. The Chair asked Mr. Love if he had a copy of the easement. Mr. Love responded that he did not bring a

copy of the easement to the hearing. The Chair asked Counsel to comment. Counsel pointed out that whatever agreement was made. The agreement is between, two parties. Therefore it was not indefinite. Mr. Love responded the easement was, recorded with the County. It states that he is allowed to use the 5 feet of space on one another's properties, for parking. He told the Board, he rarely uses the space. Again Planning Staff recommended that he obtain an easement. Mr. Love also pointed out that the 25 foot County right of way extends 5 feet, onto his property. This is the 5 feet that he would need to provide parking in the front yard. The Site Development Review that his neighbors got approved at the September 12, 2007 Hearing, does not have an issue with County right of way. The ROW does not reach the neighbor's sidewalk, as a result of how the property is situated. Mr. Love used the site plan in the staff report to illustrate his point. He would like to take 5 feet of the right of way, to use for parking. One of the Staff Planners made a site visit to his home. She could verify that the area is used as a dining room. It is also used to store his grandson's toys. If the garage were moved back 5 feet. The family would not be able to enter the dining room from the kitchen. The only way to access the dining room would be to exit the house, then enter the dining room from the back door. This would be very inconvenient. Mr. Love said that Mr. Moore on the CVMAC commented the existing area was sufficient to park. The Chair asked Mr. Love what he believed to be the special circumstances applicable to his property. Mr. Love responded that no special circumstances existed on the property. However the garage was converted when he acquired the property, in 1982. The Chair asked what year the house was built. Mr. Love believed in 1952. Mr. Love said he wanted to keep the home configuration intact. One of the reasons he purchased the home was because the garage, was converted. He has made several improvements to the home. The floor linoleum has been replaced. Damaged floor boards have also been replaced. Holes have been sealed to secure the home from insects. Paneling has been removed, and many issues corrected. The Chair referred to Finding #3. Staff has responded in the affirmative. The granting of the application will be detrimental due to the increased, on street demand for parking. The Chair asked the Applicant the following additional questions:

- Does the Applicant believe the side easement creates sufficient parking
- Would a parking space on the apron meet Zoning Ordinance requirements

Mr. Love clarified that he wanted the parking space to be in front of the building, not the side. There is sufficient room, and the space would not extend into the street. Two additional parking spaces exist in front of the house. Staff explained that parking cannot occur in the front yard setback, which is within the first 20 feet of the property. Mr. Love interjected, that the setback is behind the public right of way. The County right of way extends, 5 feet onto his property. He explained there was 14 feet between the setback and the front of the building. He would like a 5 foot encroachment into the public right of way. Staff responded that the distance depends on where the measurement is taken from. In actuality the Applicant would need 7 feet. The property is on a curve. Mr. Love clarified, only a portion of the yard on a curve. The original Staff Planner confirmed he would only need, 5 feet of encroachment. Staff explained they arrived at their calculation based on the architectural plans, submitted by Mr. Love. The Chair acknowledged there was a curvature to the property. Mr. Love closed, and asked the Board to consider the fact that a change would cost \$50,000.00 dollars to move the garage. In his opinion that was not reasonable. The original project planner pointed out that there are 6 converted garages on the street. Only two have permits. One additional home was granted a permit to convert their garage. However that homeowner did not finish the conversion. He understands that the County does not wish to set precedence. However precedence has already been set. He would like to continue to enjoy the home, in the state in which he purchased it. Public testimony was closed.

The Chair stated perhaps there was special circumstance present, due to the curvature of the parcel. Vice Chair Peixoto pointed out that variances go with the land. If a variance is granted, the easement could be cancelled at any time. The Chair said the Applicant testified he was not relying on the easement for

parking. The Vice Chair said in any case, documentation of the easement has not been presented. Therefore it cannot be considered. There also appears to be some confusion as to the distance between the setback and the front of the house. Staff said there is 13 feet. Therefore the Applicant would need to encroach 7 feet into the setback. The Applicant says he would need to encroach 5 feet into the setback. Staff confirmed the Applicant would need to encroach 7 feet into the setback. The measurement is taken from the edge of the smallest point of the curve. This is 33 feet. You then subtract the 20 foot setback. This leaves 13 feet. This would mean the Applicant would have to encroach 7 feet, back into the setback. The Chair asked staff what would be the maximum distance, if you measured from another point of the curve. Staff said 4 feet. There is a section from the garage door to the right of way that measures 36 feet. The range of encroachment would vary from 4 feet to 7 feet. The Chair asked if encroachment would be necessary if the road had no curvature. Staff responded that even if the road went straight across, encroachment would still be necessary. The distance between the garage and the road is still, 36 feet. The Vice Chair pointed out there were other options to achieve the Homeowner's goal. The Chair said it appeared the only option was to move the garage by 5 feet, or add a second story. The options are costly, and the current building is finished. The Vice Chair responded none the less, options did exist. Member Clark asked staff to clarify if a permanent easement would satisfy the parking requirements. The Chair pointed out this would eliminate the need for a variance. Staff read the Zoning Ordinance. All parking must be provided on the same building site, as the use for the building in which they are required. However the easement is partially on the site. The Chair asked if the percentage of the easement that is located on the site, a factor. Staff clarified that the easement was going across another property. This would not satisfy the parking requirements. Member Gil asked if the Applicant if he could bring the Board a copy of the recorded easement.

Public testimony was re-opened. The Chair asked Mr. Love if he would be willing to continue the application to bring in a copy of the recorded agreement between himself, and his neighbor. Mr. Love said that he and his neighbor were not willing to make the easement agreement permanent. Mr. Love said he was not willing to accept a continuance based upon the requirement of a permanent easement agreement. At this juncture he did not see the purpose of a continuance. The Vice Chair believed the fact that the easement is not permanent, answers the question. The Chair said she had a tendency to want to view actual documents. Public testimony was closed.

The Vice Chair said the easement cannot serve the purpose of providing parking. The easement is not permanent. Regarding Finding #1. There are no special circumstances that apply to the property. The Applicant can achieve the parking requirement by other means. Vice Chair Peixoto motioned to uphold the staff recommendation of denial. Member Clark seconded the motion.

Member Clark seconded the motion. The Chair said she was torn. Although the Applicant could exercise other options, due to the curvature of the lot a variance may still be needed. She did not believe the required parking was being eliminated, as a result of the easement. However a copy of the easement is not available for the Board to view. Despite the fact that the Applicant states, there is recordation of an easement, the Applicant also insists that the easement not be permanent. Therefore the easement would not be active, in conjunction with the land. Member Gil was not in favor of denial of the application. Motion to deny the application passed 3/1.

5. **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, 2007).

Staff reviewed the application. The Castro Valley Municipal Advisory Committee recommended denial of the application. Staff recommended a continuance to the October 24, 2007 Meeting. At the CVMAC meeting there was some confusion as to the date the BZA would review the application. They were concerned that the public would not be present at the hearing. Staff will re-notice the item to ensure the public is aware. The Chair received several speaker cards, and announced public testimony could be submitted. However the BZA would not make a decision. Staff clarified that variance application before the BZA is for the pre existing, non-conforming secondary unit. The applicant is now applying for a Parcel Map which triggers a variance application for the secondary unit. The Planning Director will make a decision on the subdivision, provided the BZA approves the variance. The Applicant, Mr. Kenneth Kremer was present. Mr. Kremer did not object to a continuance. Public testimony was opened.

Mr. Larry Kuzni testified that he has lived at 22440 Charlene Way for 18 years. He is speaking today as a result of the emergency occurring on his property. Due to what is taking place on the Applicants property. Mr. Kuzni asked the Board require the Applicant cease and desist with all illegal construction, and destruction on the subject parcel. Mr. Kuzni would especially like the driving of vehicles and trucks in the soft muddy soil ceased. The activity is causing a catastrophe with his bearing walls. He has had to dig shallow wells on his property to pump the water that is percolating and running, from the Kremer's parcel. The water is causing stress to the soil, and pushing it against his bearing walls on his property. Water from the adjacent parcel is also causing water to pool against the wall. He asked the Board to find a solution immediately. The Kremer Development has dramatically disrupted his quality of life. Bulldozers have leveled terrain and vegetation, which have changed the nature of the area. There is no longer a buffer between the two properties. Now there is excessive noise and light. In addition the loss of a drain pipe has caused water to pond against his bearing wall. The proposed driveway that will serve the two homes will be against his bedroom. The Kremer is not aware of all of the problems he has caused on the cul de sac. He does not live on Charlene Way. Mr. Kremer should also be aware that the street is busy. The sharp corner to enter the street can be dangerous. Mr. Kuzni said he opposed the plan. He then showed the Board photographs that supported his statements. The Applicant has already completed Phase One of the project. Mr. Kuzni also submitted a petition of people who are opposed to the project. The two homes that will exist on the property are being used as rentals. The rentals affect the value of his home. Other neighbors on Charlene Way have had problems with water seepage for years, as well. The Chair asked Mr. Kuzni if he had additional comments related to the variance application. Mr. Kuzni said he objected to the having 2 homes on the parcel above his home, and objected to the uncontrolled water runoff. The Chair asked if the excess water was caused as a result of the secondary unit. Mr. Kuzni explained that neither the main house nor the secondary unit, have gutters. The slope of the Applicant's property also attributes to water flow, onto Mr. Kuzni's property. Mr. Kuzni renewed his objection to a driveway being, located next to bedroom windows. This will generate dust and noise for his family. The Applicant will not live on the property. The residents of the neighborhood will be affected. Mr. Kuzni asked the BZA to deny the application.

The Chair called Ms. Kandie Abrey to testify. Ms. Abrey said she not prepared to make a statement. She thought the application was not scheduled for today. She will testify when the item returns to the BZA.

Ms. Bridget Paquette said she lives at 22465 Charlene Way. She is taken aback that they will only be able to offer testimony regarding the variance. She believes Mr. Kremer built the apartment above the garage without the benefit of permits. The structure also exceeds the height limit. She understands the only reason he wants a variance is this will allow him to split the lot. The neighbor's are opposed to the project. There are a lot of issues with the home the Applicant would like to build. The CVMAC reviewed the variance and SDR application together. The CVMAC denied the application because of all of the

detriment to the neighborhood. The Board Members should be able to confirm if they attended the field trip to the site. The area is a small "Country" neighborhood. The parcel is located at the top of the hill. There were already problems with water drainage at the top of the hill, prior to Applicant removing the trees, and soil. The problem has only been exacerbated. The Applicant did not obtain permits to remove trees from the property. Problems persist to this day at the site because the owner did not obtain the appropriate permits. Ms. Paquette questioned the true safety, of the property. One of the CVMAC's considerations was to have the Applicant remove the secondary unit. Then a lot split could be considered. Ms. Paquette said she realized the BZA was only considering the variance for the secondary unit. However the BZA should consider the entire scope, and affect the project will have. The infrastructure in the area has not been updated since the 1920's or 30's. The existing infrastructure cannot support additional homes. The CVMAC said the project will probably require the street to be widened. The current street width is 32 feet. The street would be widened to 50 feet. In this case the neighbors would have a roadway at their door. The infrastructure is not maintained by the County. Increased traffic will further damage this infrastructure, and will not be able to handle the large SUV's people drive. Paquette acknowledged that she drives an SUV herself. Parking is already at a premium. When the lot was split prior to this application, the requirement was that a circular driveway be installed. That was not done. This added to the traffic problems. If the street is widened she will lose 18 feet of her driveway. She can now park 3 cars. If the project is approved Ms. Paquette will have to park 2 vehicles on the street. Ms. Paquette again asked the BZA to look at all of the issues that will impact the neighborhood. Including work done improperly, on the property. Approving the application will ruin the neighborhood. The Chair asked if Code Enforcement had been contacted. Ms. Paquette said no. She did not realize there were Ordinances that might address the issues. She has also seen bulldozers grading the property. The Chair advised Ms. Paquette to contact Planning Staff for additional information.

Mr. James Faulkner said he was present representing himself, and his wife. They live at 22506 Charlene Way. He is also present on behalf of his mother in law, Mrs. Barrett. Faulkner realizes the BZA is only considering the variance application. However he hoped the Board would look at the total affect of the proposal. Mrs. Barrett has a home address is on Grove Way, but uses the gravel easement off of Charlene Way. Mr. Faulkner then referred to the topographical map in the staff report. The roadway is on the east side of Parcel #2. The home is several hundred feet, is on the southern end. This is the only access for delivery of mail and emergency vehicles, etc. Mrs. Barrett has a recorded easement in effect, since 1927. Mr. Faulkner said he is adamant there be a permanent fence placed at the east end of Parcel #2, which abuts the gravel roadway. If the home on Parcel #1 is demolished he wants to ensure there is no access along the east side of Parcel #2. The Chair told Mr. Faulkner that if there is a denial of the variance. There is no means in which to impose conditions. Mr. Faulkner acknowledged that fact. However he is still requesting vehicle access be denied to, Mrs. Barrett's property. Regardless of the BZA decision he asked strong consideration be given a fence. The Chair asked Mr. Faulkner if the Barrett property was a flag lot. (a lot that has a driveway alongside the existing home). Mr. Faulkner did not believe the lot was a flag lot. He closed and asked the BZA to deny the application.

Mrs. Gail Moore of 22499 Charlene Way said she had lived in her home for 61 years. The neighborhood is a precious place to live. Her husband built their home, and she tries to do all she can to preserve the area. Mrs. Moore said Mr. Faulkner forgot that Mrs. Barrett has two entrances to her property. One entry is on Grove Way and one entry on Charlene Way, across from her home. Mrs. Moore was shocked to see the staff report recommendation of approval. The CVMAC denied the application. She also believed the Applicant wants to subdivide. Mrs. Moore lived on the street when the apartment was built. It was ramshackle from the start. To her recollection the garage has not been in use for approximately, 20 years. The street is at a critical intersection. There is a right angle turn, where the rest home is located. Approval of the variance would also cause traffic issues. Delivery trucks have to go down Charlene Way, and then back into the convalescent home. Fire trucks have to the same. Mrs. Moore asked the Board to listen to testimony, and consider all of the issues. The original home on Mr. Kremer's property has been

a wreck for years too. The roof of Mr. Kuzni's home is at the same level of the slope on Mr. Kremer's property. This is what is causing water problems, on Mr. Kuzni's property. Mrs. Moore verified that the applicant's lot is now void of trees and vegetation. All but 2 trees have been cleared from the property. Mrs. Moore said she did some research, and confirmed that Mr. Kremer did not obtain a permit to remove the trees, until after he had everything bulldozed. She asked the Board to take this fact into consideration as to who the Applicant, really is.

The Applicant, Mr. Kremer apologized for being remiss in not soliciting the full neighborhood input, regarding the project. He has talked with a few people, but had no idea of the level of concern, until the he attended the CVMAC Meeting. It is his intent to solicit a meeting with the neighbors. In addition to the plans for the house he will show a streetscape, and landscape plan. Contrary to public opinion, the new home will be occupied by he, and his son. Therefore he is willing to make additional renovations to the home, and the apartment. He is happy to meet with neighbors to solicit ideas. Vice Chair Peixoto asked when the plans would be ready. The Chair reminded the Applicant that if his property was not in compliance, the tendency is for the Board to deny the variance. The issues brought up by the neighbors, are very obvious. Mr. Kremer responded that the property was in compliance. The Chair recommended he confirm that belief with the Building Department. Mr. Kremer said he would respond to staff within 10 days, after meeting with the neighbors. The Chair asked that any new information be included in the staff report.

Ms. Bridget Paquette returned to testify. She said there was a problem with the public notices remaining on telephone poles. In addition some people have not received notices in the mail. She asked that the names submitted on the petition, receive notices. The Chair confirmed that all residents on Charlene Way would receive notices. Public testimony was closed.

Vice Chair Peixoto motioned to continue the application to November 17, 2007. The Chair asked staff about grading taking place on the property without permits. Staff explained that a grading permit is not needed for the grading and grubbing of shrubs, and trees on private property. A permit is needed to remove trees in the public right of way. The Chair asked for clarification on the definition of "grading". As there may be an issue if grading resulted in soil erosion, and the destruction of a retaining wall. The Chair asked staff to confirm the exact location of the Public Right of Way. This may, or may not impact the application. The possibility of the road being widened may also impact the project. In addition, staff should verify what if any Building Ordinances may apply to the home. Staff clarified that the home was built prior to zoning rules. The structure is non-conforming. Therefore the current Building Ordinance does not apply to the structure.

Mrs. Moore asked if there was a Tree Ordinance in the County. The Chair explained the County did not have a Tree Ordinance for all trees. The Ordinance only applies to trees in the public right of way. A property owner has the right to remove trees, on their property.

Vice Chair Peixoto motioned to continue the application to November 7, 2007. Member Gil seconded the motion. Motion carried 4/0.

The Chair called for a short recess at 8:20 p.m. The hearing resumed at 8:30 p.m.

6. **MAURO ESCOBAR, VARIANCE, V-12083** - Application to allow an attached addition with a six-foot front yard setback, and a three foot, seven inch rear yard setback where 20 feet is the minimum required in the front and rear yards, in a R-1 (Single Family Residence) District, located at 14747 Midland Road, west side, approximately 200 feet north of Placer Drive, San Leandro area of unincorporated Alameda County, bearing Assessor's Parcel Number: 080-0002-

001-04. (Continued from August 22 and September 26, 2007).

Member Clark conferred with County Counsel. She recused herself, and did not participate in the discussion or vote. Member Clark is also a Member of the Hillcrest Knolls Home Owners Association, and holds the position of President. Staff recommended denial of the application. Public testimony was opened.

The Applicant, Mr. Mauro Escobar told the Board a contractor had been hired to conduct the work. The contractor told the property owner, Mrs. Villanueva. That he had obtained permits. Unfortunately the contractor took \$40,000.00, and then disappeared. Mr. Escobar said he was willing to compromise on the addition design. When the home was purchased, the storeroom was already in existence. The Board had the following questions for the Applicant:

- Has Mr. Escobar read the staff report
- Has the footprint of the storage room structure been expanded
- Have building permits now been obtained for the project
- What are the actual dimensions of the structure
- What is the approximate cost to complete the work the contractor abandoned
- Is the project within the sphere of the San Lorenzo Village Homes Association

Mr. Escobar confirmed he had read the staff report. The owner added the kitchen, and bedroom in the front of the home. The footprint of the home was expanded approximately 13 feet. Mr. Escobar has yet to go to the Building Department. He was awaiting the outcome of the BZA Hearing. The Staff Planner told him that there must be compliance with all respective County Agencies. That is acceptable to Mr. Escobar and Mrs. Villanueva. He did not know how much it would cost to modify the structure. However he is willing to bring it into compliance. Although he does not know the exact size of the rooms, he would like to keep the structure, and not destroy it. Mr. Escobar said that he did not have additional information, but asked the Board to approve the application. The Vice Chair interjected and confirmed that the property was not in the San Lorenzo Village Homes Association's jurisdiction. The fact that there are possible discrepancies between the site plan and the structure is problematic. The Chair commented that the addition appeared to be well built. Perhaps due to the slope of the lot there may also be special circumstances present. If the contractor had done his due diligence, the Applicant would not be in this situation. The Chair asked staff if they believed the structure should be demolished. Staff clarified that a conforming building could be built on the site. However the BZA is charged with making a determination. Public testimony was closed.

The Chair asked if the Hillcrest Knolls HOA was opposed to the application. Staff confirmed the HOA was not in favor of approval. The Vice Chair pointed out that this was a case of "buyer beware". The BZA could not put themselves between the buyer and the contractor. The Chair reiterated that had the contractor not led Mr. Escobar astray and had taken \$40,000.00 dollars. A variance would not be necessary. The staff report does point out, a slope on the property. She believed this was a special circumstance. Staff interjected, stating the slope was subtle. The Applicant can also build a conforming structure, eliminating the need for a variance. Vice Chair Peixoto thought, slope as a circumstance was stretching the point. He had visited the property and was in agreement with staff.

Vice Chair Peixoto motioned to uphold the staff recommendation of denial. The motion died due to lack of a second.

A question was raised as to if the structure can be salvaged, by making design changes. This may prevent the complete demolition of the structure. Staff assumed this was a possibility. The Chair asked Mr. Escobar if he would be willing to continue the application to discuss possibilities. Staff responded they

would not have the expertise. The Applicant should seek a recommendation and analysis from a licensed contractor or engineer. The consultation would be at the Mr. Escobar's expense. The Chair pointed out that the analysis may be less costly than tearing down the entire structure. Staff can still meet with Mr. Escobar to assist him in determining what type of specialist to retain. Mr. Escobar agreed to a continuance.

Vice Chair Peixoto motioned to continue the application to December 5, 2007. Member Gil seconded the motion. Motion carried 3/0. Member Clark abstained, and did not participate in the discussion or the vote regarding the application.

7. **JOHN KIM, VARIANCE, V-12086**, Application to allow construction of an attached garage with a three foot side yard setback where five feet is required in a "R-S-CSU-RV" (Suburban Residential, Conditional Secondary Unit, Recreational Vehicle Regulations) District, located at 4663 Heyer Avenue, south side, approximately 830 feet west of Center Street, in the unincorporated Castro Valley Area of Alameda County, Designated Assessor's Parcel Number: 84C-0701-004-04.

Castro Valley Municipal Advisory Council recommended denial of the application 6/0. The CVMAC could not find special circumstances were present, and granting the application could set precedence. Staff did not have a vote count. Planning Staff recommended approval of the application. Vice Chair Peixoto asked staff which County Agencies the application had been referred to. Staff confirmed the application was sent to Public Works, Building, Grading and Alameda County Fire. Vice Chair Peixoto pointed out there were many narrow lots in the area. For example, he got a dispensation in 1945 for a smaller garage at his property. The side clearance is only 18 inches. In this case the 3 foot setback is the clearance, the parcel will allow. Public testimony was opened.

Mr. John Kim told the Board the home on the property was built in 1928. Numerous improvements have been made to the home, including a new foundation. Mr. Kim said he had 4 children. Currently there is no storage space for items that would normally be placed in a garage. Now all of the items are stored in front of the house. Initially Mr. Kim was under the impression that the property line was where the fence is located. Later he found that not to be the case. His property is encroaching onto the neighbor's property from, zero to 19 inches. On the other side of the property his neighbor is encroaching onto Mr. Kim's property by 6 feet. The original placement of each home was in error, which has caused a domino affect down the entire street. The properties were built without benefit of a survey. Mr. Kim said he hired a surveyor to get an accurate measurement. The surveyor did confirm that the Kim's were encroaching onto the neighbor's property. The surveyor recommended a boundary adjustment.

Mr. Kim did ask his neighbor if she were willing enact a boundary adjustment. However the neighbor was unwilling. He does not blame the neighbor, as all of the homes on the street would need a boundary adjustment to rectify the situation. The only option available was to apply for a variance. The CVMAC voted 3/0 to recommend approval. The narrow shape of the lot does not allow a garage to be placed in the back. This would be challenging to drive 110 feet down the proposed driveway, to get to the garage. Mr. Kim explained he had a very difficult time obtaining approval for an accessory structure, in the rear of the property. The garage would only be for 1 vehicle. He then showed photos of the property. Board questions for Mr. Kim were as follows:

- Is the lot considered a flag lot
- Will additional work be completed on the front of the home
- What is the distance between the existing home, and the fence

Mr. Kim said the CVMAC thought a better design could be employed. However the architect submitted a letter. As a result of the encroachment, the submitted design is the best option. Although the neighbor was opposed to a boundary adjustment, she is in favor of Mr. Kim building the garage. The property is trapezoidal in shape. The distance between the home and the fence goes from 2 feet, 5 inches to 5 feet, 9 inches. Mr. Kim does plan to continue, to work on the home. The home is old and presently has no insulation. Insulation will be added, as well as a French Drainage system. Sheathing and siding will be added as well. Mr. Kim did not believe precedence would be set. He presented research that he had conducted. In 2005, Variance, V-11976, was granted, also Variance, V-11476. The Chair commented; the fact that all 9 homes on the block had inaccurate property lines due to the lack of a survey could be considered a special circumstance. The Applicant is also improving the property. Mrs. Kim asked the Board to consider that there were only 2 homes on the street without a garage, their home being one of the locations. As other homes on the block had garages, there would be no special privilege. Public testimony was closed.

Member Clark asked staff if zoning allowed a single car garage. Staff explained that for the existing home to comply with the Zoning Ordinance, they only need provide parking for 1 car. Member Clark commented that there appeared to be only one place on the lot that would accommodate a garage. She is familiar with the area, and also owns property with a narrow width, approximately 50 feet. The Chair agreed with the staff finding. Special circumstances are present due to the size and shape of the lot, the related survey error, and initial placement of the dwelling.

Member Gil motioned to uphold the staff recommendation of approval. Vice Chair Peixoto seconded the motion. Motion carried 4/0.

APPROVAL OF MINUTES: The Chair continued the approval of the September 26, 2007 Minutes to the October 24, 2007 Meeting.

STAFF COMMENTS & CORRESPONDENCE: Staff informed the Board that the Applicant for Variance, V-12060 appealed the Board of Zoning Adjustments decision of denial, to the Board of Supervisors.

BOARD'S ANNOUNCEMENTS, COMMENTS AND REPORTS: Member Gil announced she would not be present at the November 14, 2007 Meeting.

Board Members asked staff to hand deliver packets when Post Office Delivery falls on a Holiday. This will prevent delayed arrival and sufficient review time for meeting materials.

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

CHRIS BAZAR - SECRETARY
WEST COUNTY BOARD OF ZONING ADJUSTMENTS