

**MINUTES OF MEETING
WEST COUNTY BOARD OF ZONING ADJUSTMENTS
OCTOBER 11, 2006
APPROVED OCTOBER 25, 2006**

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

FIELD TRIP: 1:00 p.m.

MEMBERS PRESENT: Dawn Clark.

MEMBERS EXCUSED: Ron Palmeri; Jewell Spalding, Lester Friedman, and Frank Peixoto.

OTHERS PRESENT: Phil Sawrey-Kubicek, Senior Planner.

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

1. **JOSE RAMIRO, CONDITIONAL USE PERMIT, C-8489** – Application to allow the continued operation of a tavern “The Stadium Club” in an ACBD (Ashland Cherryland Business District Specific Plan) – Transit Corridor District, located at 15698 East 14th Street, east side, corner north of Plaza Drive, unincorporated Ashland area of Alameda County, designated Assessor’s Parcel Number: 080-0034-007-00.
2. **HUNG PHAN / DAVIS, CONDITIONAL USE PERMIT, C-8510** – Application to allow the operation of a massage therapy business, in an ACBD (Ashland Cherryland Business District Specific Plan) - Freeway Access District , located at 11 Lewelling Boulevard, north side, approximately 300 feet east of Via Granada, unincorporated San Lorenzo area of Alameda County, designated Assessor’s Parcel Number: 413-0015-038-00.
3. **SEVENTH STEP FOUNDATION, INC., C-8515** – Application to allow continued operation of a 24 bed Residential Care Facility and expansion from 24 beds to 34 beds, in the “R-S-SU” (Suburban Residence, Secondary Unit) District, located at 475 Medford Avenue, south side, 100’ east of the intersection with Haviland Avenue, Cherryland area, Assessor’s Parcel Number: 429-0019-002-00.
4. **RICKY MALVEAUX, VARIANCE, V-12021** – Application to allow a 17 foot rear yard setback where 20 feet is required in an R-S-D-25 (Suburban Residence, 2,500 square feet per Dwelling Unit) District, located at 20633 Garden Avenue, west side, approximately 300 feet south east of Bartlett Avenue, unincorporated Cherryland area of Alameda County, designated Assessor’s Parcel Number: 432-0008-026-01.
5. **FRANCIS KUN / GALLEGOS, VARIANCE, V-12017** – Application to allow expansion of a nonconforming building (reduced side yard) with the construction of a duplex with: a) a driveway three feet from a building where 10 feet is required; b) a 16 foot driveway where 20 feet is required; and c) eleven feet between a building where 20 feet is required in an R-S-D-20 (Suburban Residence, 2,000 square feet Minimum Building Site Area per Dwelling Unit) District, located at 260 Poplar Avenue, northwest side, approximately 250 feet southwest of Princeton Street, unincorporated Cherryland area of Alameda County, designated Assessor’s Parcel Number: 429-0091-025-02.

6. **JOE TEIXEIRA, VARIANCE, V-12023 and PARCEL MAP, PM-8981** – Application to subdivide one parcel into three lots; and a variance to allow a four foot setback from a private street where 10 feet is required, in an R-1-CSU-RV (Single Family Residence, Secondary Unit, Recreational Vehicle) District, located at 19448 Lake Chabot Boulevard, east side, approximately, 250 feet north of Barlow Drive, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 084B-0529-038-04.

REGULAR MEETING: 6:00 p.m.

MEMBERS PRESENT: Chair; Ron Palmeri; Members; Jewell Spalding, Lester Friedman and Dawn Clark-Montenegro.

MEMBERS EXCUSED: Frank Peixoto.

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

There were approximately 9 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: The Chair made no announcements.

OPEN FORUM:

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

No one requested to be heard under open forum.

CONSENT CALENDAR:

1. **4000 AUTO WRECKERS, CONDITIONAL USE PERMIT, C-8419** – Application to allow continued operation of an auto dismantling yard, in an M-2-B-E (Heavy Industrial, 5 acre Minimum Building Site Area) District, located at 3810 Depot Road, south side, approximately 0.75 miles west of Clawiter Road, unincorporated Eden area of Alameda County, designated Assessor's Parcel Number: 0439-0070-008-06. (Continued from April 12, May 10, August 9 and August 27, 2006; to be continued without discussion to December 12, 2006).

The Chair asked staff why application, C-8419 had been delayed for a period of six months. Staff said the applicant has received clearance from the Fire Department and is now working with the Building Department to obtain compliance. Building has notified the applicant that a structural engineer must determine the stability of the existing holding racks on the property. The applicant is making progress and continues to cooperate with staff.

Members Spalding and Friedman asked what was the estimated time needed for the applicant to obtain full compliance. Staff told the Board that engineering plans should be ready by December. The Chair notified staff that if the applicant requires a continuation beyond December 13, 2006, documentation

supporting the request must be submitted to the Board.

Member Spalding motioned to accept the Consent Calendar as submitted. Member Clark seconded the motion. Motion carried 4/0. Member Pexioto was excused.

REGULAR CALENDAR

The Chair reviewed Agenda Items #1, #2, #3, #4 and #5 on the Regular Calendar that were being continued.

No requests to speak were submitted regarding Items #1 through #5 of the Regular Calendar. Member Spalding motioned to accept staff's continuance recommendations. Member Friedman seconded the motion. Motion carried 4/0. Member Pexioto was excused.

1. **JOSE RAMIRO, CONDITIONAL USE PERMIT, C-8489** – Application to allow the continued operation of a tavern “The Stadium Club” in an ACBD (Ashland Cherryland Business District Specific Plan) – Transit Corridor District, located at 15698 East 14th Street, east side, corner north of Plaza Drive, unincorporated Ashland area of Alameda County, designated Assessor's Parcel Number: 080-0034-007-00.

Conditional Use Permit, C-8489. The applicant requested a continuance to have a translator present at the hearing. The Sheriff's Department also asked for a continuance to process data related to the application. The data will also be submitted to COMPRE for review. Staff recommended the hearing date of November 15, 2006.

2. **RAYMOND WONG / RAJESHWAR SINGH – CONDITIONAL USE PERMIT, C-8492 and VARIANCE, V-11997** – Application to construct two new secondary dwelling units and retain the existing dwelling as the third unit providing a 12 foot wide driveway where 15 feet are required; a 16 foot rear yard where 20 feet are required; and 7,440 square feet of lot area where 7,500 square feet is required for a third unit in an R-2-B-E (Two Family Residence with a Minimum Building Site Area of 8,750 square feet) District, located at 16790 Los Banos Street in the unincorporated Ashland area of Alameda County, designated Assessor's Parcel Number: 080-0083-007-01. (Continued from July 12, 26, and August 23 and September 27, 2006).

Variance, V-11997 will be continued to November 15, 2006.

3. **JOHN SULLIVAN, CONDITIONAL USE PERMIT, C-8495** – Application to allow continued use of one site for: a) an outdoor storage yard; b) occupancy of a contractor's unit; and c) contractor's storage yard, in an M-2 (Heavy Industrial) District, located at 16520 Worthley Drive, southwest side, approximately 1,650 feet southeast of Grant Avenue, unincorporated San Lorenzo area of Alameda County, designated Assessor's Parcel Number: 438-0010-004-14. (Continued from August 9 and August 23, 2006).

Staff announced that Code Enforcement conducted a site visit. The applicant was given a list of what needs to be brought into compliance. Staff requested a continuance to December 13, 2006 to allow the applicant to comply with the notice.

4. **PHOI PHAN, VARIANCE, V-11951** – Application to allow construction of four dwelling units with: a) A five foot side yard; b) a two foot driveway set back, raised to four feet; c) 1,536 square feet of open space where 2,400 square feet of open space is required; d) no

sidewalk; and e) A 13 foot wide driveway where 16 feet is required in an R-S-D-20 (Suburban Residence, 2,000 square feet Minimum Building Site Area per Dwelling Unit) District, located at 230 Laurel Avenue, north side, approximately 400 feet west of Princeton Street, unincorporated Cherryland area of Alameda County, designated Assessor's Parcel Number: 429-0091-058-00. (Continued from April 26, June 28, July 26 and September 13, 2006).

The applicant has submitted revised plans in an effort to alleviate the necessity of a variance. Staff requested a continuance to November 8, 2006 to confirm the viability of the revised project.

5. **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 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. (Continued from June 14, July 12, August 9 and September 13, 2006).

Variance, V-11987 will be continued to November 8, 2006.

6. **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, June 14, July 12 and September 13, 2006).

Staff recommended denial of the application. Member Spalding asked if the proposed fence encompassed the entire 47 acre property. Members Spalding and Friedman asked the proposed length, and if the height would be seven foot along the entire span. Staff confirmed that the proposed fence would span 500 feet of the property, and retain a seven foot height along its entirety. The setback from the property line would vary with two access gates. Along the street side front yard, the setback would be approximately 5 feet. Public testimony was opened.

The applicant Alfredo Gonzalez was present. Mr. Gonzalez asked the architect for the project, Mr. Anthony Wright to address the Board. Mr. Wright said the property was rather unusual in that the terrain has areas with steep drops. The center area of the seven foot fence would have pillars placed 20 feet on center. At the sloped portion of the property the visible part of the fence is 4 feet in height. The design and placement of the fence is impacted due to an existing leech field on the property which cannot be moved. The applicant raises valuable, Andalusia Horses which creates possible security issues. The fence height provides additional security. Board questions were as follows:

- Where is the leech field located on the property
- Where are the horses in relation to the front fence
- Are the animals in view from the street
- Can the fence design be lowered in height
- Are any there any upcoming Ordinance changes regarding fence height

- Is the applicant amenable to the recommendation of the CVMAC that the gate of the caretaker's home be a minimum of 20 feet from the property line

Mr. Wright told the Board that the leech field was located in front of the horse arena. The applicant has a use permit for 80 horses. Currently there are 20 horses boarded on the property, and they are visible from the street. The Zoning Ordinance will allow a six foot wire fence however he believes the proposed iron work fence which includes a crest will look better. The property is not located in a commercial area and the pillars will enhance the property. The visible height of the gate is four foot, nine inches from the street due to the slope of the property. Mr. Wright said he would be amenable to CVMAC's recommendation but would await the BZA's determination.

The applicant, Mr. Gonzalez told the Board both sides of the property could be seen from the front of the road. He believed the fence design would make the property look nice. The seven foot height is not as much of an issue as the appearance of the fence varies due to the terrain.

Staff responded currently there was no date set for an Ordinance amendment. Member Spalding believed staff should explore the possibility of raising the fence height limit in light of the fact that the current Ordinance allows for higher wire fencing. She asked staff to follow up as to how the Board could make an official Ordinance revision request. Public testimony was closed.

Member Spalding asked staff why the application would not be considered a special circumstance as a result of slope. She believed that consideration should have been explored in the staff report. Staff responded they did not believe dramatically sloped terrain existed on the property. Member Spalding asked Mr. Wright if a detailed topography map would establish his earlier testimony. He confirmed it would.

Member Clark motioned to continue the application for 30 days to allow the applicant to present a readable topography map, and a line of site map. Member Spalding seconded the motion to continue the application to November 8, 2006. Motion carried 4/0. Member Pexioto was excused.

7. **FRANCIS KUN / GALLEGOS, VARIANCE, V-12017** – Application to allow expansion of a nonconforming building (reduced side yard) with the construction of a duplex with: a) a driveway three feet from a building where 10 feet is required; b) a 16 foot driveway where 20 feet is required; and c) eleven feet between a building where 20 feet is required in an R-S-D-20 (Suburban Residence, 2,000 square feet Minimum Building Site Area per Dwelling Unit) District, located at 260 Poplar Avenue, northwest side, approximately 250 feet southwest of Princeton Street, unincorporated Cherryland area of Alameda County, designated Assessor's Parcel Number: 429-0091-025-02.

Staff recommended approval of the application. Member Friedman asked if the Cherryland Association had provided staff with input in addition to their submitted letter requesting denial. Staff confirmed they had not.

The Chair questioned the tentative finding regarding special circumstances applied to the property as a result of the parcel width and location of the single family dwelling. The property would have to be unique from other properties in the same district. Referring to a parcel map of the area he pointed out that the majority of properties on Princeton Street, Laurel and Princeton Avenues, and Sunset Boulevard are approximately, 50 feet in width. Staff responded that 50 feet was not the predominate width in the area. Some lots on Princeton Avenue were 60 feet in width and some on Sunset Boulevard were 75 feet. The Chair disagreed with staff that the circumstance was unique based on a count of parcels 50 feet in width. Additional Board questions were as follows:

- What is the definition of the Zoning Designation R-S-DV
- How would the non-conforming aspect of the property be affected by the variance
- What is the basis of the tentative finding determination that the application will not adversely affect the neighborhood when the Cherryland Association believes the project will have an adverse impact
- If special circumstance has been determined regarding a non-conforming property is there a limitation on expansion or modification
- If modified does the property lose its non-conforming status

Staff explained that the new Zoning Designation, Density Variable had recently gone into effect. Density is based on the width of the parcel. In this case based on width the applicant can place 3 units on the property. Staff considers the width of the parcel a special circumstance. However a variance would still be required because the Ordinance states that if there is more than a 50% change on the property a variance must still be sought due to the non-conforming aspect of the reduced side yard. The width of the lot and placement of the home were determined prior to the implementation of the Zoning Ordinance. The three foot side yard on the existing residence would retain the nonconforming status, as it will remain unchanged. The driveway to access the proposed rear duplex would require more than a 50% change from the minimum requirements for setback and length. Regarding the Cherryland Association's recommendation, staff considered their input, however respectfully disagrees. Public testimony was opened.

Mr. Francis Kun told the Board his interpretation of the letter received from the Cherryland Association is they believe the setback variance applies to the proposed duplex. The duplex setbacks are in compliance with the Ordinance. The variance applies to the existing structure's side setback. Member Spalding pointed out that you could not access the proposed duplex without a driveway. Mr. Kun said he attempted to get as close as possible to Ordinance requirements. The proposed 18 foot width should work considering there will be little traffic to and from the duplex. Six parking spaces will be provided.

Additional questions for the applicant and staff were as follows:

- What is the total frontage of the lot
- What is the width of the existing driveway
- What is the distance of the parking from existing and proposed structures
- Will covered parking be provided on the site
- Was a garage considered as a parking solution for the site
- Is off street parking required
- Could the rear units be converted into condominiums at some point in the future

Mr. Kun said the existing driveway is 19 feet wide. The existing home is approximately, 28 feet wide. The closest parking space to the existing structure is approximately seven feet. Parking would not be covered. A traditional garage design was not an option because there is insufficient maneuvering and turn space. The applicant, Mr. Gallegos did not provide additional testimony. Public testimony was closed.

Member Spalding motioned to deny the application. Although staff believes lot width is a special circumstance based on maps of the area, there are other lots in existence, 60 feet or less in width.

Granting the application would be a special privilege as there are other lots are of similar size in the immediate area. The proposed uncovered design, and mid lot placement of parking reduces usable open space. Although the Ordinance does not require guest parking for rental units, granting the application could exacerbate the existing situation where on street parking is extremely limited. Granting the application would be a detriment to persons in the neighborhood. Member Friedman seconded the motion. Motion to deny the application carried 4/0. Member Pexioto was excused.

APPROVAL OF MINUTES: Member Friedman motioned to approve the Minutes of September 13, 2006 with submitted corrections. Member Clark seconded the motion. Motion carried 4/0. Member Pexioto was excused.

STAFF COMMENTS & CORRESPONDENCE: Staff made no announcements.

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

BOARD'S ANNOUNCEMENTS, COMMENTS AND REPORTS:

Member Spalding asked staff to follow up on her earlier request for an Ordinance amendment to fence height. The existing Ordinance currently allows a six foot wire fence in an "A" District. Applicants should be able to enhance their properties with upgraded fencing. For example a wrought iron fence serves the same purpose as a chicken wire fence. The slope of a property should also be taken into consideration. Member Friedman said he tended to agree, however a height of seven feet may be slightly too high.

Staff responded that an open vs. solid fence is a one consideration, as it could affect visibility. Slope is not a consideration in the current Ordinance. Staff will speak to a representative of the Ordinance Review Committee and report back.

Members Friedman and Clark asked for the results of the most recent Board of Supervisor's appeals. Staff said that the BOS overturned on appeal the BZA's decision of denial, regarding, Conditional Use Permit, C-8448, Regal and Variance, V-11992 Fuentes Najarro. The recommendation referred to the BOS regarding, Van Voorhis, 06-67 was approved on the Consent Calendar.

The Chair commented that he felt strongly that the BOS uphold the BZA's decisions. Recently he spent considerable time writing a letter to the BOS. He believed that the fact that staff changed their original opinion in the appeal letter had an impact on the final BOS decision. Member Spalding agreed that when staff changes its position, it does have an impact. Staff should have retained their recommendation of denial.

ADJOURNMENT:

There being no further business, the hearing adjourned at 4:30 p.m.

CHRIS BAZAR - SECRETARY
WEST COUNTY BOARD OF ZONING ADJUSTMENTS

