

MINUTES OF MEETING
WEST COUNTY BOARD OF ZONING ADJUSTMENTS
JUNE 28, 2006
APPROVED JULY 26, 2006

The meeting was held at the hour of 1:30 p.m. in the Alameda County Building, 224 West Winton Avenue, Hayward, California.

REGULAR MEETING: 1:30 p.m.

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

MEMBERS EXCUSED: None.

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

There were approximately 8 people in the audience.

CALL TO ORDER:

The meeting was called to order by the Chair at 1:30 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. **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 and May 24, 2006; to be continued without discussion to July 26, 2006).

2. **JERRY REILLY/WEST WINTON AVE. LLC, VARIANCE, V-11980** - Application to allow 1) one site with 3,948 square feet as a building site which is less than the minimum 5,000 square feet required; and 2) allow an addition above the garage with a zero foot front yard setback where 20 feet is required, in an R-1 (Single Family Residence) District, located at 14643 Saturn Drive, west side, approximately 600 feet south of Joan Drive, unincorporated Ashland area of Alameda County, designated Assessor's Parcel Numbers: 079-0006-033-02 and

079-0006-032-02. (Continued from February 22, March 22 and April 12, 2006; to be continued without discussion to July 26, 2006).

3. **LUIS ROBLES/GURCHARAN DHALIWAL, VARIANCE, V-11995** – Application to allow construction of a second dwelling providing a 10 foot wide driveway where 12 feet is the minimum and a zero foot setback between a driveway and a dwelling, and a dwelling and dwelling wall, in an R-S-D-35 (Suburban Residence, 3,500 square feet Minimum Building Site Area per Dwelling Unit) District, located at 167 Blossom Way, south side, approximately, 300 feet east of Meekland Avenue, unincorporated Cherryland area of Alameda County, designated Assessor's Parcel Number: 0429-0032-017-00. (Continued from April 12 and May 24, 2006).

This item was moved from the Regular Calendar and continued to July 12, 2006.

Member Friedman motioned to accept the Consent Calendar as amended. Member Pexioto seconded the motion. Member Spalding did not participate in the vote. Motion carried 4/0.

REGULAR CALENDAR

1. **TRINH HOANG, CONDITIONAL USE PERMIT, C-8443** – Application to allow continued operation of an auto service facility for minor auto repair in a C-N (Neighborhood Commercial) District, located at 20009 Meekland Avenue, west side, corner southwest of Blossom Way, unincorporated Cherryland area of Alameda County, designated Assessor's Parcel Number: 429-0032-001-04. (Continued from January 11, March 8 and April 24, 2006).

Staff recommended approval of the application. Board questions for staff were as follows:

- Have the 13 Conditions of Approval from the past CUP been met
- What has caused the delay in renewal of the current permit
- Is the on-site storage of vehicles an allowed use on the property
- Is the sale of automobiles an allowed use on the property
- Are food vendors continuing to do business on the property

Staff responded that the applicant was in compliance with 7 of the 13 former Conditions. The application was submitted in July 2005. Staff has been working with the applicant to bring all of the outstanding issues into compliance. Landscaping has been installed but now needs to be weeded and maintained. The Cherryland Association requested that Code Enforcement investigate the condition of the property. Enforcement staff discovered on site storage and vehicles for sale, uses not allowed on the property. Code Enforcement staff will be present at the second half of the meeting and can testify as to if they have observed food sales. Public testimony was opened. The applicant was not present. Public testimony was closed.

The Chair announced that his preference was to have the matter continued for 30 days to allow the applicant to be present. This would enable the applicant to finish required paving, the replacement of

widows etc. before the next hearing. Member Friedman asked staff if the applicant was notified of the hearing. Staff confirmed that notification had been received. Member Friedman then proposed an alternative.

Member Friedman motioned to deny the application based on prior violations of Conditions of Approval. Tentative Finding #1 should be modified to state no. There is no proven need that the services the applicant is providing are needed by the community. Moreover the services being provided are not covered by the prior CUP. Finding #2 should be modified to state no. The on-site uses being conducted are not permitted, and do not adhere with performance standards for the area. Tentative Finding #3 should be amended to say yes. Previous and current conditions at the site will materially affect the health and safety of the public. Tentative Finding #4 should state yes. The uses performed on site are contrary to the specific intent clauses for the District. The motion died due to lack of a second.

Member Pexioto motioned to continue the application to July 26, 2006. It has been the modus operandi of the Board to speak with applicants in person before denying or approving an application. In addition a continuation will also allow the applicant time to clean up the property. Member Clark seconded the motion. Member Friedman was not in favor of a continuance due to the current condition and the unapproved uses taking place on the property. Member Spalding was not present for the vote. Motion carried 3/1/0.

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 and June 14, 2006).

The staff recommendation was approval based on a determination that only a small section of the supermarket would be devoted to alcohol sales. The application went before MAC on June 26, 2006. The decision was a split vote 3 to 3. Some Council Members thought the use was ok, and similar to Trader Joes. Others thought that the concentration of alcohol outlets in the immediate area was too high.

The Chair said his concern was that the Board never received a response from County Counsel regarding a section of the Alameda County Alcohol Policy that states the recommendation of a 500 foot separation between similar uses can be waived if deemed irrelevant by public convenience and necessity. A second consideration is that all applicants be given consistent and equal treatment. Initial questions for staff were as follows:

- What process did Trader Joes go through to obtain their use permit
- Was Trader Joe's staff required to complete training on Responsible Beverage Service
- What were the Conditions of Approval for Trader Joes

Staff said all applicants go through the Conditional Use, Public Hearing process. Member Pexioto reminded the Board that the BZA only made a decision regarding signage at Trader Joes. Staff clarified that in April 2002, when the application was approved zoning decisions were made by the Zoning Administrator. Trader Joes Conditions of Approval were not available at the meeting. This application was continued at the June 12, 2006 MAC Meeting to allow review of a new Public Convenience and Necessity Ordinance. After review it appears that the Public Convenience Ordinance was drafted after

this application was submitted. Therefore the Public Convenience and Necessity Ordinance would not apply. Public testimony was opened.

One of the owners of El Rancho Supermercado, Mr. Mario Prado urged the Board to consider the merits of the application. The Board of Supervisor's Resolution 96-97 adopted in 1995 as the Alameda County Alcohol Policy was intended to give guidance, not to be rigid and final. Community organizations like COMPRE have based their recommendation on the fact that the use is within 500 feet of other outlets. The sale of beer and wine at the Super Mercado is small in comparison to other goods. The Alcohol Policy also states that for large retailers such as supermarkets where alcohol is not the principal venture, and where such business is otherwise required by public convenience and necessity, the distance requirement may be waived if deemed irrelevant. Trader Joes is approximately 8,000 square feet in area with 360 square feet used for alcohol sales. El Rancho is 6,000 square feet and proposes to use 50 square feet of area for alcohol sales. The area of the two stores is comparable. Mr. Prado urged the Board to give the proposed application equal treatment.

As one of the current owners they are willing to work with the Board and Community Organizations to insure there are no detrimental effects to the community. For example, MAC requested the market not sell "singles", El Rancho is willing to comply. Product to be sold will be packaged to add convenience to the family shopper.

Member Pexioto asked Mr. Prado to expand on his comment from prior BZA Hearings regarding the sale of specialized beers. Mr. Prado said one brand of beer the store would carry is called Toscana, from Peru. El Rancho would be the only place the brand could be purchased in the area. Toscana is especially popular among Peruvian people in the area. Member Pexioto asked if American brands like Budweiser would be available as well. The applicant confirmed they would.

Member Spalding asked if the market would sell highly concentrated beer products. She also asked if a public phone booth was still located outside of the store. In the past she had observed loitering. Solutions to discourage lingering should be considered. Mr. Prado said El Rancho would focus on the family shopper and only sell beer and wine in standard container portions.

Member Friedman asked for clarification as to if the prior ABC License had lapsed or been revoked. Also will the brands of beer and wine be limited to those not available at other stores like 7-11 or Trader Joe's. Mr. Prado confirmed that the prior ABC License had been revoked for non payment prior to his purchase of the store. Limiting El Rancho to specific brands would put the store at a distinct competitive disadvantage. The type of customer that shops at El Rancho is very busy. They are shopping for goods for the entire family and may not necessarily want to shop at a liquor store. Member Friedman said the difficulty was that the store was still within 500 feet of other liquor outlets like 7-11 and Town & Country Liquor. If the market were selling distinct or ethnic products that were not available at any other store that would be unique. Products that can be purchased at other locations make it more difficult for him to come to the conclusion there is a public need. Mr. Prado pointed out that all of the aforementioned establishments were in business prior to Trader Joe's being established and that did not prevent Trader Joes from obtaining a use permit. The products offered at El Mercado would truly be unique and not readily available.

Member Clark asked Mr. Prado if he would consider selling specific imports and add domestic brands at a later stage. Staff interjected that condition would be difficult to enforce.

Member Spalding raised a question to the extent of store product since 50 square feet would be used for alcohol sales. The prior owner did not keep the shelves well stocked or utilize the entire floor space. Mr. Prado said a complete list of alcoholic beverages had yet to be determined. The entire floor space will be

utilized. In addition to a full produce section the market carries many specialty products. Several kinds of tamale husks, including banana leaf husks. In addition to regular bread, Mexican artisan breads are delivered daily. Customers can have the butcher do custom meat cuts done or purchase pre cut meats. Specialty cuts can be ordered with a two week lead time. Dairy cheeses that originate from Latin American countries are delivered weekly as well.

Mr. Rubin Massa, Prevention Specialist with said COMPRE was opposed to granting the application. It is in clear violation of the Alameda County Alcohol Policy. Five alcohol outlets are within 500 feet of El Rancho. There is a need for a Latino Market in the community which COMPRE is in support of. COMPRE is not in support of another alcohol outlet. At the MAC Meeting a representative from the First Baptist Church said they were also concerned about an additional alcohol outlet in the area. An increase in traffic may contribute to the amount of litter and drinking that takes place in the church parking lot. Mr. Massa added that Town & Country Liquors already sells 7 imported beers. Trader Joe's offers a wide variety of Latin American Wines. People who want to purchase alcohol have several outlets in the area available to them within 500 feet of the Market.

Member Spalding asked Mr. Massa what imported brands of beer he observed at the other alcohol outlets. Mr. Massa said 7-11 sold seven different brands, including Tecate and Modelo. Town and Country Liquor Store sells high alcohol content, forty 40 ounce beers.

Member Friedman asked Mr. Massa if he had his family with him while conducting the alcohol outlet survey since one of the issues raised by the applicant is that families would not feel comfortable going into an adjacent facility to purchase alcohol. Mr. Massa confirmed that his wife and nine month old child were with him. The survey was conducted in the morning and he felt no threat.

Liz Morales, also a Prevention Specialist at COMPRE read a letter submitted by the Castro Valley Action Network. (CV CAN). Adding another alcohol outlet violates County Policy and undermines the work of (CV CAN). The goal of CV CAN is to reduce the use of alcohol and drugs. The applicant says they will sell specialty alcohol products. The alcohol license allows the sale of beer and wine. If the applicant sold the store, who would monitor and verify that alcohol was strictly limited to specialty products. Ms. Morales asked the Board to base their decision on County Policy not the applicant's intent.

Ms. Racquel Domingo, a Member of EYHAC was in support of the Super Mercado but did not believe an additional alcohol outlet would be useful with other outlets in close range. Although not the applicant's intent an increase in the visibility of alcohol would tempt youth and encourage underage drinking. Drug abuse and underage drinking are already a big problem. Ms Domino came to voice her opinion as a youth of Castro Valley. She recommended the Board deny the application.

Mr. David Cota, also from COMPRE believed that Tentative Finding #1 should be modified to state, no. There is a need for the market not for the sale of alcohol. Tentative Finding #3 should be no. The parishioners at the First Baptist Church have already been affected by the people gathering to drink in the parking lot and depositing litter. Tentative Finding #4 should be yes. In reference to the Addendum in the staff report the conclusion is that the "Public Convenience and Necessity" Ordinance does not apply to this application since it was submitted prior to the Ordinance. Mr. Cota informed the Board that COMPRE no longer conducted the Responsible Beverage Service program as conditioned in Pre-Hearing Recommendation #9

Mr. George Saffas told the Board he was present for another matter but decided to speak after hearing previous testimony. Over the week-end he was looking to purchase a specialty liqueur. Neither, 7-11 or Trader Joes carried the liqueur. He decided to go into El Rancho. They did not carry the product either but based on his experience it makes sense for a customer to have the convenience of also purchasing

alcohol. The market was clean and the atmosphere was pleasant. He attends religious meetings in the area and would feel comfortable shopping at the market again. It is unlikely that people who might purchase alcohol at the Market would go to the nearby church parking lot, due to the location. Also any store selling alcohol must institute certain conditions. He did not think competition would be a problem. Public testimony was closed.

Member Friedman noted that according to the language in the Alcohol Policy the distance requirement may be deemed irrelevant. The word irrelevant means totally meaningless. Member Pexioto pointed out that minimum distance must be relevant in respect to outlets or it would not be part of the Alcohol Policy. Staff responded that Ordinance Policy language does not disregard distance as a factor but allows the Board latitude in making a determination.

Member Spalding believed that a six lane road of fast moving traffic would be a physical impediment. Personally, she would hesitate before crossing the congested street with two double turn lanes. She also pointed out that a letter was submitted by the owner of Town & Country Liquor. Mr. Tarsem Singh said the Liquor store had been in business for 50 years. He believed that an additional alcohol outlet would have a financial impact on his business. The market should remain as a market.

The Chair asked for clarification as well. He had issue with the language that the 500 foot distance could be waived. The language does not specifically state the Board can use discretion in waving the distance requirement. County Counsel said the language did indicate that it may not apply to all zoning types but to supermarkets. The Chair asked what was the definition of "supermarket" and "large super market". County Counsel noted that is where the Board had some discretion in determining size. His understanding is that a store that provides produce, meat etc. qualifies as a supermarket.

Member Spalding thought additional greenery would improve the site. The applicant should include a landscaping plan and diagram that includes beautification to the parking strip. Staff explained that an encroachment permit from Public Works would be needed to alter the parking strip. A proposal on who will be responsible for removing litter and trash from the immediate area should be added as well. A portion of the litter is probably generated by Town & Country Liquors on the opposite side of the parking lot.

Member Friedman had a problem with the wording in Tentative Finding #1. He believed the "use" as a market is required however the "use" selling of alcohol is not required.

Member Pexioto asked again if Public Convenience and Necessity can override the 500 foot distance rule. Staff clarified that a recent Public Convenience and Necessity Ordinance was being considered by the Alameda County Board of Supervisors. That Ordinance did not apply in this case since it was drafted after submission of this application.

Member Spalding asked staff to confirm the Board was applying the correct statute, and if the same statute was applied to Town & Country Liquor. Staff explained that the Alameda County Alcohol Policy is used in conjunction with the Zoning Ordinance. The "use" is processed through a Conditional Use Permit, Public Hearing Process.

Member Pexioto motioned to deny the application. Regarding Tentative Finding #1, the alcohol sales use is minor, moreover there is no proof that a need exists to sell alcohol. Tentative Finding #3 should be modified to state that increased alcohol sales will be a danger to the shopping center. Tentative Finding #4 should be stated in the affirmative. The use will be contrary to the specific intent clauses established for the District. Regarding convenience, alcohol can be purchased two doors from the Market. Existing merchants can offer specialty products as the need arises.

Member Friedman seconded the motion with clarification to Tentative Finding #1. There is no public need for the sale of alcohol. There is however a necessity for the Market.

Member Spalding was in favor of granting the application. The busy street in front of the market can be considered as a barrier preventing the public from easily crossing the street to access additional stores.

Motion to deny the application carried 4/1.

3. **LUIS ROBLES/GURCHARAN DHALIWAL, VARIANCE, V-11995** – Application to allow construction of a second dwelling providing a 10 foot wide driveway where 12 feet is the minimum and a zero foot setback between a driveway and a dwelling, and a dwelling and dwelling wall, in an R-S-D-35 (Suburban Residence, 3,500 square feet Minimum Building Site Area per Dwelling Unit) District, located at 167 Blossom Way, south side, approximately, 300 feet east of Meekland Avenue, unincorporated Cherryland area of Alameda County, designated Assessor's Parcel Number: 0429-0032-017-00. (Continued from April 12 and May 24, 2006).

The Chair This item was moved to the Consent Calendar.

4. **ARNOLDO HERNANDEZ, 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.

The staff recommendation was approval. MAC was in favor of approval as well. The Chair asked staff if there was an administrative process available as opposed to the public application process. For example in this case the proposed 51 square foot addition would not further reduce setbacks. The applicant was just filling out the building footprint and the setbacks were created prior to zoning. Staff responded that the addition is in the front yard. Therefore a variance is required for expansion of a non-conforming dwelling. Public testimony was opened.

The applicant was present but did not wish to speak. Public testimony was closed.

Member Pexioto motioned to adopt the staff finding of approval. Member Spalding seconded the motion. Motion to approve the application carried 5/0.

APPROVAL OF MINUTES: Member Pexioto motioned to approve the Minutes of June 14, 2006 with submitted corrections. Member Clark seconded the motion. Motion carried 5/0.

STAFF COMMENTS & CORRESPONDENCE: None.

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

BOARD'S ANNOUNCEMENTS, COMMENTS AND REPORTS:

Board Members were concerned that after a Condition Use Permit is approved there is no follow up to

verify that applicants are in compliance with conditions of approval. They requested that staff structure a position whose sole duty is to follow up on use permits. The Chair proposed a fee structure be incorporated into the application process to enable staff follow up.

The Board also discussed the issue of renewal applications that are not in compliance with prior conditions of approval. The following recommendations were posed:

- All former conditions must be in compliance before a new application be considered
- Applications may be continued for 30 days to allow applicants to bring open issues into compliance
- Impose an inspection fee in conjunction with a site visit within 10 days of approval
- Approve applications only after all conditions are met

ADJOURNMENT:

There being no further business, the hearing adjourned at 4:15 p.m.

CHRIS BAZAR - SECRETARY
WEST COUNTY BOARD OF ZONING ADJUSTMENTS