

MINUTES OF MEETING
WEST COUNTY BOARD OF ZONING ADJUSTMENTS
JULY 13, 2005
(APPROVED AUGUST 10, 2005)

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

FIELD TRIP: 1:30 p.m.

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

MEMBERS PRESENT: Members Frank Peixoto, Chair.

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

OTHERS PRESENT: Phil Sawrey-Kubicek, Senior Planner

1. **SENECA CENTER/SAN LORENZO UNIFIED SCHOOL DISTRICT, CONDITIONAL USE PERMIT, C-8227** – Application to allow continued use of eleven existing portable buildings at the Seneca Center school, in a R-1-RV (Single Family Residence and Recreational Vehicle) District, located at 2275 Arlington Drive, east side, approximately 100 feet east of Manchester Road, unincorporated Ashland area of Alameda County, designated Assessor's Parcel Number: 080A-0174-021-00.
2. **DANIEL and CONSTANCE DAVIS, CONDITIONAL USE PERMIT, C-8406** – Application to continue operation of a before and after school day care center, in an R-S-CSU-RV (Suburban Family Residence with Conditional Secondary Unit and Recreational Vehicle) District, located at 4779 Heyer Avenue, south side, approximately 482 feet west of Center Street, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 084C-0700-001-02. (Continued from June 22, 2005).
3. **NEW CINGULAR WIRELESS, CONDITIONAL USE PERMIT, C- 8407** – Application to install and operate a wireless communication facility in an M-1-B-40 (Light Industrial, 40,000 square feet Minimum Building Site Area, 150 feet Minimum Lot Width, 30 foot Front Yard, and 20 foot Side Yard) District, located at 2497 Grove Way, south east side, approximately 321 feet south west of Morales Court, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Numbers: 0416-0080-001-02 and 0416-0080-003-02.
4. **CHENG CHUL NAM, CONDITIONAL USE PERMIT, C-8431** - Application to relocate an existing alcohol outlet within an existing commercial center building in a CVCBDSP-SUB7 (Castro Valley Central Business District Specific Plan – Subarea 7) District, located at 20459 Redwood Road, west side, approximately 400 feet north of Castro Valley Boulevard, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 084A-0080-011-09.
5. **MARCO A. NAVA, VARIANCE, V-11843** – Application to: 1) allow the conversion of the garage from non-habitable space into habitable space; and 2) a

five foot side yard setback where nine feet is required on a 0.27 acre site, in an R-1 (Single Family Residence) District, located at 21150 Hathaway Avenue, east side, approximately 155 feet north of Mero Street, unincorporated Cherryland area of Alameda County, designated Assessor's Parcel Number: 0429-0041-101-00. (Continued from June 22, 2005).

6. **JEFF and JULIE DE LIMA, VARIANCE, V-11917** – Application for building dwelling 28 feet - six inches in height where 27 feet is the maximum allowed, and a 10 foot side yard where a 20 foot yard is required; and 2) a detached secondary dwelling unit two stories and 20 feet in height where one story and 15 feet are the maximum allowed in an R-1-B-40-CSU-RV (Single Family Residence, 40,000 square foot Minimum Building Site Area, Secondary Unit, Recreational Vehicle) District, located at 17760 Madison Avenue, east side, approximately 1,200 feet north of Seaview Avenue, unincorporated, Castro Valley area of Alameda County, and designated Assessor's Parcel Number: 084C-0910-005-07. (Continued from May 25, 2005).
7. **COURT & GILL BOIM, VARIANCE, V-11938** – Application to construct an attached addition so as to result in a 28 foot, six inch high dwelling where 25 feet is the maximum height permitted in an R-1-B-E-CSU-RV (Single Family Residence, 10,000 square foot Minimum Building Site, 70-foot Median Lot Width, Conditional Secondary Unit, Recreational Vehicle Storage) District, located at 18036 Jaymark Court, east side, approximately 81 feet south of the intersection with Reamer Road, in the unincorporated Castro Valley area of Alameda County, bearing Assessor's Parcel number: 084D-1158-003-04.
8. **PLAVALIL VARGHESE, VARIANCE, V-11943** – Application to construct an attached addition to a single family dwelling resulting in a new average height of 29 feet where 25 feet in the maximum allowed, and an 18 foot rear yard where a 20 foot yard is required in a R-1-RV (Single Family Residence, Recreational Vehicle) District, located at 16813 President Drive, west side, approximately 150 feet south of 167th Avenue, unincorporated Ashland area of Alameda County, designated Assessor's Parcel Number: 080A-0221-007-00.

REGULAR MEETING: 6:00 p.m.

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

MEMBERS EXCUSED: None.

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

There were approximately 91 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:

There were 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. **BOB MASON, CONDITIONAL USE PERMIT, C-7756** - Application to modify Conditional Use Permit, C-7447 to allow: 1) storage for 20 vehicles; 2) increase from 125 to 145 horses; and 3) to add a feed store at an existing breeding, boarding and training facility for 125 horses, in an "A" (Agricultural) District, located at 24550 Palomares Road, east side, approximately ¼ mile south of Palo Verde Road, unincorporated Castro Valley area of Alameda County, bearing Assessor's Parcel Number: 085A-2700-001-07. (Continued from December 11, 2002; February 26, March 26, April 23, May 28, June 25; July 23, September 10 and October 8, November 5, 2003; January 14, August 11, July 14, December 8, 2004, January 26, April 13 and June 8, 2005; to be continued without discussion to August 10, 2005).

Member Palmeri asked staff for a definitive date that Conditional Use Permit, C-7756 would come before the Board. The application had been on the Calendar for almost three years and he felt it was appropriate for the Board to make a determination. Staff reported that significant progress had been made. A new individual now has partial ownership of the property, and has taken full responsibility. Major cleaning has taken place and the initial study has been started. The application should be before the Board at the August 10, 2005 Hearing.

2. **NEXTEL, CONDITIONAL USE PERMIT, C-8399** – Application to continue operation of an existing wireless communication facility (cellular site) in an R-1-CSU-RV (Single Family Residence with Conditional Secondary Unit and Recreational Unit) District, located at 20600 John Drive, east side, approximately 480 feet northeast of the end of Regent Way, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Numbers: 084A-0235-001-03 and 084A-0240-001-02. (Continued from May 11, 2005; to be continued without discussion to September 28, 2005).
3. **CARLOS RUANO, CONDITIONAL USE PERMIT, C-8401** – Application to remodel an existing dwelling by construction of an attached addition in a C-1 (Retail Business) District, located at 16990 Westerman Court, southwest side, approximately 75 feet northwest of East Lewelling Boulevard, unincorporated Cherryland area of Alameda County, designated Assessor's Parcel Number: 0414-0001-002-02. (Continued from May 11, May 25 and June 22, 2005). **WITHDRAWN**
4. **GRACIANO A. MORALES, VARIANCE, V-11930** – Application to retain a 52 square foot bathroom where 20 square feet is the maximum floor area allowed

in a detached accessory structure, and which when combined with another accessory structure (storage shed) occupy sixty-six (66) percent of the required rear yard where thirty (30) percent is the maximum, in an R-1 (Single Family Residence) District, located at 16774 Meekland Avenue, east side, approximately 60 feet north of East Lewelling Boulevard, unincorporated Ashland area of Alameda County, designated Assessor's Parcel Number: 0413-0023-057-00. (Continued from June 8, 2005; to be continued without discussion to August 10, 2005).

The applicant, Ana Morales requested that the Board hear her application in the month of September because she will be out of the Country in August. Staff scheduled the application for the September 14, 2005 Hearing.

Member Palmeri motioned to approve the Consent Calendar as amended. Member Friedman, seconded the motion. Motion carried 4/0.

REGULAR CALENDAR

1. **SENECA CENTER/SAN LORENZO UNIFIED SCHOOL DISTRICT, CONDITIONAL USE PERMIT, C-8227** – Application to allow continued use of eleven existing portable buildings at the Seneca Center school, in a R-1-RV (Single Family Residence and Recreational Vehicle) District, located at 2275 Arlington Drive, east side, approximately 100 feet east of Manchester Road, unincorporated Ashland area of Alameda County, designated Assessor's Parcel Number: 080A-0174-021-00.

A Staff Member of Seneca Center asked the Board for a continuance until their Director returned from vacation. Member Spalding motioned to continue the application to August 10, 2005. Member Friedman seconded the motion. Motion carried 4/0.

2. **DANIEL and CONSTANCE DAVIS, CONDITIONAL USE PERMIT, C-8406** – Application to continue operation of a before and after school day care center, in an R-S-CSU-RV (Suburban Family Residence with Conditional Secondary Unit and Recreational Vehicle) District, located at 4779 Heyer Avenue, south side, approximately 482 feet west of Center Street, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 084C-0700-001-02. (Continued from June 22, 2005).

Staff recommended approval of the application. Public testimony was opened. A representative for the applicant was present. The Board had no questions. Public testimony was closed. Member Palmeri motioned to uphold the staff recommendation of approval for a period of 5 years. Member Spalding seconded the motion. Motion carried 4/0.

3. **NEW CINGULAR WIRELESS, CONDITIONAL USE PERMIT, C- 8407** – Application to install and operate a wireless communication facility in an M-1-B-40 (Light Industrial, 40,000 square feet Minimum Building Site Area, 150 feet Minimum Lot Width, 30 foot Front Yard, and 20 foot Side Yard) District, located at 2497 Grove Way, south east side, approximately 321 feet south west of Morales Court, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Numbers: 0416-0080-001-02 and 0416-

0080-003-02.

Staff reviewed the application and recommended approval. Member Friedman asked if co-location was considered for the location. Staff responded that in this particular location, six antennas would be mounted in three sectors. Two antennas will be mounted on the façade of roof parapet at a height of 35 feet – six inches. The location is at the rear of a three story warehouse. The remaining four will be on the roof facing Grove Way behind an integrated 6 foot, screen wall. Another company could possibly co-locate somewhere else on the property using a mono pole application. Member Spalding asked why a variance was needed. The application is superior to many that had come before the Board in the past. Staff said it was standard policy to seek approval for Communication Facilities under the Alameda County Development Standards for Siting of Telecommunication Facilities. Public testimony was opened. Nicole Crowley, representing New Cingular Wireless introduced herself. She pointed out that the pole was hidden well, and will be painted to blend into the site. The Board had no further questions. Public testimony was closed.

Member Palmeri motioned to adopt staff's findings of approval subject to the Pre Hearing Recommendations contained in the staff report. The permit shall be for a period of 5 years, per Condition #18. Member Friedman seconded the motion. Motion carried 4/0.

4. **CHENG CHUL NAM, CONDITIONAL USE PERMIT, C-8431** - Application to relocate an existing alcohol outlet within an existing commercial center building in a CVCBDSP-SUB7 (Castro Valley Central Business District Specific Plan – Subarea 7) District, located at 20459 Redwood Road, west side, approximately 400 feet north of Castro Valley Boulevard, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 084A-0080-011-09.

The staff recommendation was approval of the application. The Castro Valley Municipal Advisory Committee voted 4/0 to approve the application on July 10, 2005. They recommended the permit expire in conjunction with the lease of the space, in 15 years. Questions of the Board were the following:

- What has transpired that requires the business to relocate
- What other stores currently exist in the center
- What other businesses plan to open at the center

Staff confirmed that the 99 Cent Store was closing and room must be made to accommodate new tenants. The commercial center was constructed in 1956, and the license for the liquor store was obtained in 1957. Conditional Use Permits were not required at that time. The store could operate indefinitely at the current location however current zoning requires a Conditional Use Permit for any new alcohol outlet. Public testimony was opened. Mr. Chung, the proprietor introduced himself. He has signed a lease for the new space until 2010. At that time he will have an option for a five year lease. His father was the original proprietor. He and his son currently run the store. The property owner said Mr. Chung had begun the current lease in March. When the term is up in March of 2010, Mr. Chung will have the option of renewing again for one or two five year terms. Peet's Coffee & Tea will be moving into the current liquor store space. Jamba Juice and Payless Shoe Source are also negotiating to open locations at the center. A Jamba Juice outlet may not come to fruition however, due to the fact that Payless Shoes requires that food and beverage outlets not be located within a minimum proximity of their store.

Further questions of the Board were as follows:

- Will there be outdoor seating at the re-designed center

- Will the current handicapped parking spaces be re-located

The Center Owner confirmed that the accessible parking would remain at its current location. Outdoor seating would be a nice addition and he will follow County Zoning guidelines. Ms. Liz Morales of COMPRE spoke in favor of the re-location of the liquor store within the center. COMPRE also supported the MAC recommendation of limiting signage to no more than 10% of the window frontage this would allow visibility to law enforcement in the event of an emergency. Public testimony was closed. Member Spalding thought the impeccable track record of the long term business should be acknowledged by allowing the ten year expiration period recommended by staff. Member Palmeri was concerned that tying in three, five year leases was too long for a permit of this type. Member Friedman was concerned. Although there had been no problems in the past the Board's standard was a five year approval period for most conditional use permits. Member Spalding recommended the permit expire in five years or whenever ownership of the business changes. Member Friedman agreed. Renewal in five years should be perfunctory since there have been no problems in the past.

Member Palmeri motioned to approve the application with the Conditional Use to expire in a period of 5 years or with a change in ownership, whichever comes first. Member Friedman seconded the motion. Motion carried 4/0.

5. **MARCO A. NAVA, VARIANCE, V-11843** – Application to: 1) allow the conversion of the garage from non-habitable space into habitable space; and 2) a five foot side yard setback where nine feet is required on a 0.27 acre site, in an R-1 (Single Family Residence) District, located at 21150 Hathaway Avenue, east side, approximately 155 feet north of Mero Street, unincorporated Cherryland area of Alameda County, designated Assessor's Parcel Number: 0429-0041-101-00. (Continued from June 22, 2005).

Staff recommended denial of the application. Public testimony was opened. Mr. Nava stated the dimensions of the driveway and setbacks of the property. The existing garage is setback 20 feet from the set back line, allowing a total of 50 feet. He would like to convert the garage into living space, and store four cars to six cars next to the space. The Chair asked if he had considered redesign options that would allow the space to remain a garage. Mr. Nava said he came to the Planning Department at the onset of the project and was told a variance would not be necessary. His engineer then came to the zoning counter and was told more than 50% of the rear yard was not being utilized so a variance would not be required. Five foot side setbacks were sufficient. A variance for parking was all that would be required. Working drawings were then made for the project. Upon submitting the plans in March, 2004 he was told by Staff Member, Brett Lucas variances would be required for garage conversion and side yard setbacks. He was extremely frustrated by the different information obtained from various staff people. As a result he was out two thousand dollars, and still did not have the go ahead for his project.

Board Member Spalding asked staff if they would be amenable to working with the applicant to resolve the issues and prevent further costs. If no resolution was possible, perhaps a portion of the application fee could be refunded. Staff explained that the garage conversion would not meet the standards of the Garage Conversion Ordinance, therefore no options were available. Mr. Nava interjected that he was also told at the zoning counter he could use panel doors on the garage as an option. The Chair recommended the applicant meet with staff to discuss any possible alternatives or refund. If the Board rendered a decision today the finding would be denial. Public testimony was closed.

Member Spalding motioned to continue the application to August 10, 2005. Member Friedman seconded the motion. Motion carried 4/0.

6. **MYRNA HOAG, VARIANCE, V-11908** - Application to retain an expansion of a non-conforming use (tow yard in a residential area) and retention of an eight foot chain link fence in a R-S-D-15 (Suburban Residence with 1,500 square feet Minimum Building Site Area per Dwelling Unit) District, located at 16037 to 16097 Mateo Street, southwest side, approximately 311 feet northwest of 162nd Avenue, unincorporated Ashland area of Alameda County, designated Assessor's Parcel Numbers: 0080-0057-030-00, 0080-0057-036-00 and 0080-0057-037-02. (Continued from May 11 and June 22, 2005).

Staff reminded the Board the application had come before them on May 11 and June 22, 2005. Recommendation was denial of the expansion of the non-conforming use (tow yard) and approval of the variance for a fence height of eight feet. Member Friedman commented that the photographs contained in the staff report reflected a progressive increase of vehicles being stored on the property over the past 10 years. Staff concurred. Public testimony was opened. The applicant, Ms. Mryna Hoag and her sister Mrs. Katrina Moretti were present. Ms. Hoag submitted a packet of background materials that the Board requested in June. She asked for an extension until the end of August. Her attorney was out of town and she would like to confer with him regarding the material. Staff suggested the first meeting in September to allow everyone time to review the submission. Public testimony was closed.

Member Spalding motioned to continue the application to September 14, 2005. Member Friedman seconded the motion. Motion carried 4/0.

7. **JEFF and JULIE DE LIMA, VARIANCE, V-11917** – Application for building site status on a parcel without approved frontage in order to construct: 1) a single family dwelling 28 feet - six inches in height where 27 feet is the maximum allowed, and a 10 foot side yard where a 20 foot yard is required; and 2) a detached secondary dwelling unit two stories and 20 feet in height where one story and 15 feet are the maximum allowed in an R-1-B-40-CSU-RV (Single Family Residence, 40,000 square foot Minimum Building Site Area, Secondary Unit, Recreational Vehicle) District, located at 17760 Madison Avenue, east side, approximately 1,200 feet north of Seaview Avenue, unincorporated, Castro Valley area of Alameda County, and designated Assessor's Parcel Number: 084C-0910-005-07. (Continued from May 25, 2005).

Staff recommended approval of the application subject to the Conditions set forth in the staff report. Public testimony was opened. Mr. English, the architect introduced himself. He is the designer and will also oversee the entire process. A variance is required to bring the property to a level playing field. The property has two fronts and unusual topography. He has been in contact with the Planning Department three times since the beginning of the project. He has also incorporated recommendations from the neighbors into the project as well. Staff did a very good job of identifying problems and providing solutions. The De Limas are present and will address any issues and questions. They are prepared to accept the conditions in the staff report.

The Board's initial questions for the applicant were as follows:

- Have the most recent recommendations from the last MAC Meeting been compiled in written form
- What is the square footage of the secondary unit

- Will the secondary unit contain kitchen facilities

Staff confirmed that per the Zoning Ordinance, for a structure to be classified as a secondary unit the square footage must exceed 20 square feet and contain a full bathroom or kitchen. The applicant Mr. De Lima said the original design was 1,250 square feet. The design has now been modified to conform to 640 square feet.

Neighbors from the area submitted speaker cards, written comments and also spoke to the Board about the project. Salvino Garcia, Jose Torres, Ricardo Lara and Cal Churchill submitted speaker cards in opposition to the variance. They chose to give their time to Gerald Thompson who spoke on everyone's behalf. Mr. Thompson read from a letter that he and his wife submitted. He stated four specific objections. A summary of the objections are as follows:

- There are no special circumstances that would warrant a primary home that exceeds the maximum height limit
- The subject property has adequate level building area for a primary residence without violating the 20 foot setback
- A two story secondary dwelling, 20 feet in height to accommodate a four car garage would be unfair to other residents that must abide by the 15 foot height limit
- The secondary unit and other portions of the project are proposed to be built on a slope greater than 30% which is not allowed by the Specific Plan. The proposed location is also in the middle of a drainage swale

Mr. Thompson asked the Board to deny the application because the project would change the character of the neighborhood. The project should be re-designed with the secondary unit located on a safe portion of the property. He closed and asked that the De Lima's abide by the rules that are in place to: ensure privacy, safety, the appropriate use of communally maintained accesses roads, and preservation of the natural creek environment.

Ms. Winnie Thompson said the neighborhood had established rules so they could all live together in peace. She disagreed with the comment in the staff report that the Specific Plan was ambiguous. She said if a large enough area was measured it might appear that the slope greater than 30%. Zoning does not allow for two story secondary units or for a structure to be built into canyon walls. The Planning Department was causing needless strife by supporting the variance project. She closed by reading excerpts from an article published in the Castro Valley Forum. The Planning Department should not give special privileges and encourage encroaching development. The Planning Department exists to serve the people.

Christine Sarantakis and Susan Bogue gave their time to Lyle Bogue. Mr. Bogue said he and his wife live on the second parcel south of the De Lima property. He welcomed the De Limas and said they had come to live in an area of great civic pride. Two creeks meet in the area. As a result of the unique nature of the area the Board of Supervisors adopted a Specific Plan in 1975. The Specific Plan addresses all of the issues raised and should be adhered to. Regarding slope the Specific Plans states, building should not take place on slopes that exceed 30%. Building must also be within 70 feet of an access road. Staff

reports have changed after each MAC Meeting. When all of the information is considered, including the area and zoning it appears a staff bias exists. Staff is advocating for the applicant. Mr. Bogue disagreed with comments in the staff report that a four car garage would limit grading, and to the reference that the creeks in the area were road side ditches. Water runs from the creeks to the Bay. Run-off from the De Lima property is of great concern. He asked planning staff for further explanation as to why a variance for the main house constitutes special privilege, but the proposed secondary unit would not. He requested staff revisit the plans to come up with a workable solution that was in compliance with the Specific Plan.

Juan Hernandez and Matt Turner gave their speaking time to Dianna Hanna. Ms. Hanna clarified that she did not live on Madison Avenue and had nothing personal against the De Lima's but she objected to the variance. The area was environmentally sensitive with creeks running on both sides of the property. Through work on a sub-committee of the Bay Area Creeks Coalition a survey of the area has been completed by an experienced biologist. The project would cause loss of vegetation and degradation to the sides of the creek banks. Flooding occurs when it rains causing storm water and untreated pollutants to drain across the access road. Excess water may also cause the access road to collapse into the creek. An exception should not be made, and the Zoning Ordinance should be followed.

Mr. David Deets believed a two story garage on a 30% slope was stretching the condition in the Specific Plan. He is a licensed contractor. The applicant can build a home that would accentuate the area with out deviating from the Specific Plan. Eliminating a unit in the rear would allow percolation and adhere to grading requirements. Connie Deets added that they chose the natural area because of the wildlife. The unit could be utilized as a rental at some point in time. She also objected to the placement of the unit behind the main home. It gives the impression that the occupants from the main residence are trying to hide it from their view.

Speaker Cheryl Miaglia said the applicant had a right to develop the property but one sentence in the staff report said it all. "Conforming development is possible". There is a long list of rules that should be followed. She suggested that the Board request a report from Bay Area Water Quality before making a decision. The past County record has been stellar. In her opinion the Board should deny the application.

Ms. Roxanne Lewis, of 17750 Madison Avenue did not believe special circumstances were present. She also pointed out that only two neighbors signed a petition in support of the application. Fourteen neighbors are opposed to the application. A portion of Madison Avenue is on a blind curve. Construction traffic would also put strain on the 50 year old bridge. She requested the Board slow down the review process and carefully consider the application.

Mr. Ken Rose the General Contractor working with the De Limas gave the Board more detailed information about the secondary unit. The unit is cut into the hill. One side of the hill is higher than the other so a two story structure is more appropriate. The hillside also helps minimize the visual impact of the structure. The goal is to use a minimal amount of the parcel. The topographical map was completed by a civil engineer and all grades are 30% or less. The closest home to the property is 80 feet away.

Mr. Brian Matsumura lives north of the project. If the facts contained in the staff report are accurate, he does not object to the project. He would like any staging during construction to be limited to Common Road.

Mr. Jim Bissell who lives at 17480 Madison Avenue told the Board he was a civil engineer by trade. His observations were that a small portion in the rear of the parcel exceeds a 30% slope. Thus far no land survey has been shown as part of the application. A survey may shed additional light on the project. The proposed easement recommendations would require easements from the adjoining properties. He also

asked staff who would ensure that overhanging trees on the road remained trimmed and clear. He closed and said that he agreed with his neighbor. The old bridge could not sustain increased traffic. Public testimony was closed.

Further, Board questions were as follows:

- Can the Board request testing of the site to determine the slope on the property
- How was slope calculated in 1975 when the Madison Specific Plan was written
- If conforming development is possible, can special circumstances be present on the property as well
- Is the recommended 20 foot easement recommended by the Fire Department too severe
- Was enough accurate information present to enable the Board to come to a decision

Staff responded that the special circumstance was the shape of the lot and the location of the creeks. The Planning Department uses median lot width when calculating height as opposed to mean lot width. Planning has determined that the proposed location of the secondary unit would not be located in a section with a slope greater than 30%. The applicant could re-design the project. The secondary unit could be attached to the main house. However this would create a larger single story structure that would reduce the impervious surface on the parcel. Member Palmeri said by his rough calculation the portion of the lot to the east appeared to have a slope greater than 30%. Members Friedman and Palemri both agreed that the parcel was large enough to alter the placement of the main home and conform to zoning setbacks. Member Spalding added that the choices appeared to be design driven. Member Palmeri stated there appeared to be significant environmental issues. The staff report says the project is exempt from CEQA but he would like further un-biased information from staff concerning the following:

- What is the recommendation from Clean Water as to the placement of structures in order to minimize the impact of water run-off, drainage etc.
- What is the slope variation of the parcel

The Chair said he was not opposed to the proposed height variance. He would first like to see what other re-design solutions might be available incorporating any new information/data. The secondary unit design can be altered. Member Spalding was in agreement that new design considerations should not be limited to height but structure placement and drainage as a whole.

Member Palmer motioned to approve the application for building site status, and the height variance for the main residence. The remaining portion of the variance will be continued to the September 14, 2005 Hearing. Member Friedman seconded the motion. Motion carried 4/0.

8. **MATIAN BOT, VARIANCE, V-11927 and SITE DEVELOPMENT REVIEW, S-1984** – Application to allow construction of a new dwelling so as to provide an eight foot setback between access driveway and building wall and to maintain a four foot six inch side yard setback where 10 feet is the minimum required in a R-S-SU (Suburban Residence, Secondary Unit) District located at

147 Medford Avenue, south side, approximately 337 feet east of the intersection with Meekland Avenue, in the unincorporated Cherryland area of Alameda County, bearing Assessor's Parcel Number: 429-0010-014-02. (Continued from May 25 and June 22, 2005).

The application had been before the Board on May 25 and June 22, 2005. Staff recommended approval of a second dwelling unit and denial of a four foot – six inch side yard setback. Several topics were raised regarding the application. The possibility to impose conditions of approval that would restrict further development; the possibility of deed restriction; and the possibility of redesigning the proposed unit in order to comply with the setback from the access driveway. In summary, County Counsel's Statement determined that the Board could not restrict the applicant from further development than is contemplated in the present application through deed restriction. Given the current zoning combined with lot size which allows for additional development, there does not appear to be an adequate record to impose the proposed conditions. Public testimony was opened.

Mr. Bot told the Board he was in agreement with the recommendations. He was willing to redesign the layout of the proposed dwelling to adhere to the 10 foot setback requirement. He is anxious to move forward with the project. Staff explained that there was some confusion at the last hearing due to the presence of three mail boxes on the property. The owner uses one as a mailbox for his business. The home in the front of the parcel is two stories. A one story structure is located toward the rear of the parcel. Building Records do not indicate that the single story structure is a habitable unit. The back portion of the parcel contains three accessory structures used for greenhouses and storage. The rear, single story structure will be demolished and replaced with a two story unit. One of the accessory structures will also be demolished to accommodate the new unit. Member Friedman asked if the existing single story structure was habitable. Mr. Bot said it had been rented in the past before he purchased the property but he wanted to tear it down and replace it with a two story secondary unit.

Member Palmeri motioned to adopt staff's findings as indicated for approval of a four foot – six inch side yard, and denial of an eight foot setback between a driveway and dwelling wall. Member Friedman seconded the motion. Motion carried 4/0.

9. **PLAVALIL VARGHESE, VARIANCE, V-11943** – Application to construct an attached addition to a single family dwelling resulting in a new average height of 29 feet where 25 feet is the maximum allowed, and an 18 foot rear yard where a 20 foot yard is required in a R-1-RV (Single Family Residence, Recreational Vehicle) District, located at 16813 President Drive, west side, approximately 150 feet south of 167th Avenue, unincorporated Ashland area of Alameda County, designated Assessor's Parcel Number: 080A-0221-007-00.

The Chair gave the gavel to the Vice Chair Palmeri to avoid what he felt might be a possible conflict of interest. Vice Chair, Palmeri accepted. The Chair departed the meeting at 8:45 p.m. Staff recommended approval of the application. The applicant, Mr. Varghese told the Board the requested addition, deck and stairway would be at the rear of the property. Staff clarified that the natural slope from the street is greater than 30%. A third story is allowed according to the Zoning Ordinance. The existing two story structure was granted a height variance due to topographical limitations that precluded it from conforming to height limitations. The proposed average height of 29 feet for the three story addition is two feet higher than the current 27 foot average height. Vice Chair, Palmeri asked staff why the proposed lower deck could not be reduced to comply with the rear yard setback. Staff said the existing deck on the north side of the dwelling will not be extended along the proposed addition. The new lower deck will be added and extend along the rear of the addition. The proposed deck setback would only be reduced to 18 feet on the south side of the property. This is as a result of the dwelling which is not at a 90 degree angle to the

property line. Public testimony was closed.

Member Friedman motion to adopt the staff recommendation of approval. Member Spalding seconded the motion. Motion carried 3/0. The Chair was excused.

APPROVAL OF MINUTES:

Member Palmeri motioned to postpone the approval of the Minutes of May 25, and June 8, 2005 to August 10, 2005 due to the lack of a quorum. Member Friedman seconded the motion. Motion carried 3/0. The Chair was excused.

STAFF COMMENTS & CORRESPONDENCE:

No Staff Report was submitted.

CHAIR'S REPORT:

No Chair's report was submitted.

BOARD'S ANNOUNCEMENTS, COMMENTS AND REPORTS:

Member Palmeri asked staff to follow up with the Board of Supervisors regarding the assignment of a new Zoning Board Member. The current shortage of one Member was causing application delays and meeting cancellations due to the lack of a quorum when current Members were unavailable.

Member Palmeri requested that the Meeting of July 27, 2005 be cancelled. Members Spalding and Palmeri were both going to be out of town.

Member Spalding suggested to staff that the calculation methods of slope/average slope be re-examined when the General Plan was updated. New technology available through Global Positioning Software and Service Providers like Google could provide more accurate topographical information. Member Palmeri agreed that any tool that could assist the Board in interpreting applications and provide additional guidance would be helpful.

ADJOURNMENT:

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

CHRIS BAZAR - SECRETARY
WEST COUNTY BOARD OF ZONING ADJUSTMENTS