

MINUTES OF MEETING
WEST COUNTY BOARD OF ZONING ADJUSTMENTS
AUGUST 22, 2007
APPROVED ON SEPTEMBER 26, 2007

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

FIELD TRIP: 11:30 p.m.

MEMBERS PRESENT: Chair; Jewell Spalding; and Member; Dawn Clark.

MEMBERS EXCUSED: Vice Chair; Frank Peixoto; Member, Ron Palmeri.

OTHERS PRESENT: Phil Sawrey-Kubicek, Senior Planner

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

1. **CONDITIONAL USE PERMIT, C-8644 – SHELLY POE/DANIEL and CONSTANCE DAVIS** - Application to allow the operation of a child care facility for forty children, in a R-1 (Single Family Residence) District, located at 2894 D Street, north side, approximately 400 feet west of Maud Avenue, unincorporated Fairview area of Alameda County, bearing Assessor's Parcel Number: 416-0190-044-02.

2. **VARIANCE, V-12083 – MAURO ESCOBAR** - Application to allow an attached addition with a six-foot front yard setback where 20 feet is the minimum, in a R-1 (Single Family Residence, 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.

REGULAR MEETING: 1:30 p.m.

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

MEMBERS EXCUSED: None.

OTHERS PRESENT: Phil Sawrey-Kubicek, Senior Planner; County Counsel, Ray Mac Kay; Yvonne Bea Grundy, Recording Secretary

There were approximately 14 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 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. **CONDITIONAL USE PERMIT, C-8599 – COPTIC ORTHODOX CHURCH** - Application to allow the continued operation of a church facility, in a R-1 (Single Family Residence) District, located at 2500 Hansen Road, west side, approximately 400 feet north of East Avenue, unincorporated Fairview area of Alameda County, designated Assessor's Parcel Number: 0426-0130-072-00. (Continued from July 11 and August 8, 2007; to be continued to September 12, 2007).
2. **VARIANCE, V-12003 – HHT ENGINEERING** - Application to allow subdivision of one site into three lots: 1) an 18 foot driveway where 20 feet is the minimum required; 2) a driveway, one foot from a building wall where 10 feet is required; and 3) an 11 foot rear yard where 20 feet is required in an R-S-D-35 (Suburban Residence, 3,500 square foot, Minimum Building Site Area per Dwelling Unit Density) District, located at 134 Grove Way, northwest side, approximately 150 feet southeast of Meekland Avenue, unincorporated Cherryland Area of Alameda County, designated Assessor's Parcel Number: 429-0032-030-00. (Continued from March 28 and May 23, 2007; to be continued to September 12, 2007).
3. **VARIANCE, V-12060 – AC MAHARAJ CONSTRUCTION** - Application to allow the construction of two new single family dwellings with a zero foot setback from the existing dwelling wall to the driveway where 10 feet is required, in an R-S-SU (Suburban Residence, Secondary Unit) District, located at 670 & 672 Hampton Road, north side, approximately 150 feet northwest of Camden Avenue, Unincorporated Cherryland area of Alameda County, designated Assessor's Parcel Number: 414-0026-100-00. (Continued from May 9, June 13, June 27 and July 25, 2007; to be continued to September 26, 2007).
4. **VARIANCE, V-12061 - SEAD SISIC** - Application to allow a six foot high fence where four feet is the maximum, and to allow an accessory structure in the front half of the lot in an "R-1-RV" (Single Family Residence, Recreational Vehicle) District, located at 18658 Crest Avenue, northeast side, approximately 440 feet northwest of Titan Way, in the unincorporated Castro Valley area of Alameda County, and designated Assessor's Parcel Number: 084B-0370-007-13. (Continued from May 23 and June 27, 2007; to be continued to September 26, 2007).
5. **VARIANCE, V-12083 - MAURO ESCOBAR** – Application to allow an attached addition with a six-foot front yard setback where 20 feet is the minimum, in a R-1 (Single Family Residence, 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. (To be continued to September 26, 2007).

Mrs. Mauro Escobar was present at the meeting and requested to be heard. Mrs. Escobar asked the Board

for an interpreter that speaks Spanish to be present when her application is heard by the BZA on September 26, 2007.

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

REGULAR CALENDAR

1. **CONDITIONAL USE PERMIT, C-8559 – JOSE OLIVAREZ** - Application to allow the continued operation of an indoor recreation facility in an ACBD-FA (Ashland Cherryland Business Districts Specific Plan) Freeway Access District, located at 20613 Mission Boulevard, southwest side, approximately 100 feet northwest of Medford Avenue, unincorporated Cherryland Area of Alameda County, designated Assessor's Parcel Number: 414-0041-037-00. (Continued from February 28, March 28, April 25, May 23, June 13 and July 25, 2007).

Staff reminded the Board that the item had been continued from the February 28, March 28, April 25, May 23, June 13 and July 25, 2007 Meetings in order to obtain additional referral responses, and for the property owner to complete work on the property requested by staff. The Cherryland Association is in support of the application. Alameda County Redevelopment Agency had no comment regarding the application. The Alameda County Fire Department has received the request for an inspection, but as of yet has not been able to visit the site. Additional Board questions were as follows:

- Was a parking agreement a requirement of the past CUP
- If so does the applicant have a signed parking agreement with the neighboring property owner
- Has there been ongoing progress regarding the removal of the extensive wall graphic
- Is the graphic considered signage in relation to Zoning Ordinance definition
- If so what portion of the remaining graphic would comply with Ordinance size requirements
- Has there been a change in property owners since the last CUP Permit

Staff confirmed there was a parking agreement in conjunction with the past permit. Staff reviewed a copy of the parking agreement, which did not contain an expiration date. An additional section of the wall graphic has been removed. However the graphic of the boxer still remains on the rear wall. The graphic that remains, does appear to fit into the classification of signage. Staff did not have the dimension of the remaining graphic but would measure the area to ensure that it would comply with size limitations. The property owner and the business operator have remained unchanged since the issuance of the prior permit. Public testimony was opened.

Contact Steve Owen spoke on behalf of the property owner, and the applicant. Mr. Owen said that all parties were in agreement with the Conditions of Approval. All of the requested work has been completed. Mr. Owen said the Building Department will not conduct their final inspection until the Fire Inspection has been completed. The Fire Inspection has been requested but as of yet he has not received any correspondence from Alameda County Fire. Member Clark asked Mr. Owen who hired him to complete work at the site. Mr. Owen told the Board that the property owner, Mr. Medina had contracted his services. Mr. Medina was present and confirmed that was the case. He has owned the property since

1982. The Chair asked the parties if they had read the entire staff report. Mr. Owen, Mr. Medina, and Mr. Olivarez confirmed they had. Public testimony was closed.

The Chair asked staff to clarify which photographs chronicled improvements made to the property since the submission of the application. She also asked staff to confirm that a variance had been granted for the property regarding parking requirements. After reviewing photographs the Chair said she would like to see landscaping added to the site. Staff confirmed that a variance had been granted for the parking threshold. The applicant is also in compliance with the current parking requirements. Vice Chair Peixoto pointed out that the Pre Hearing Recommendation did not mention what the applicant's responsibilities were related to Alameda County Fire, and the Alameda County Building Department. The applicant should also be given a time frame in which to comply with requirements of these Agencies.

Member Palmeri motioned to adopt the staff finding of approval with the following modification. The applicant shall comply with all requirements of the Alameda County Fire Department and Building Department within a period of 60 days. Member Clark, seconded the motion. Motion carried 4/0.

2. **CONDITIONAL USE PERMIT, C-8561 – JULIANA and JOSEPH TABURAZA** - Application to allow continued operation of a residential care facility for eight elderly adults, in a R-1-B-E (Single Family Residence, 6,000 square feet Minimum Building Site Area, 60 feet Median Lot Width, 20 feet Front Yard, 7 feet Side Yard) District, located at 2767 Colony View Place, south side, approximately 150 feet east of Winfeldt Road and Second Street, unincorporated Fairview area of Alameda County, designated Assessor's Parcel Number: 0425-0170-085-00. (Continued from July 25, 2007).

Member Clark recused herself, and did not participate in the discussion or decision regarding the application. The staff recommendation was approval. Public testimony was opened. The applicant did not appear. Nor did a representative appear on behalf of applicant. The Chair asked Vice Chair Peixoto, and Board Member Palmeri if they would like to continue the item in light of the fact the applicant was not present. Vice Chair Peixoto pointed out that no statements in opposition to the application had been submitted. The Board agreed to proceed with a vote on the application. Public testimony was closed.

Vice Chair Peixoto motioned to uphold the staff finding of approval with the following modifications to the Pre Hearing Recommendations. Pre Hearing Recommendation #17. This Permit, C-8561 shall expire on August 22, 2007, and shall be in effect for 3 years. Member Palmeri seconded the motion. Motion carried 3/0. Member Clark recused herself.

3. **CONDITIONAL USE PERMIT, C-8644 - SHELLY POE** - Application to allow the operation of a child care facility for forty children, in a R-1 (Single Family Residence) District, located at 2894 D Street, north side, approximately 400 feet west of Maud Avenue, unincorporated Fairview area of Alameda County, bearing Assessor's Parcel Number: 416-0190-044-02.

Staff announced that they had not received a referral response from the Fairview Community Club. The Chair interjected that she did not believe the Community Club had regular meetings. The staff recommendation was approval. Vice Chair Peixoto asked staff why there had been a 3 year gap between the prior and current applications. Staff said the child care center had not been operational since the expiration of the past permit. The current applicant is new. Public testimony was opened.

The Applicant Ms. Shelly Poe told the Board that she had received fire clearance from Alameda County Fire. She has also obtained her child care license from the State of California. Ms. Poe said she was also in agreement with all of the required Conditions of Approval. Thus far she is in compliance with all

requirements except signage. The required signage is in the process of being completed.

Board questions for the applicant were as follows:

- Will child drop off times be staggered
- How many parking spaces are available
- Is the child care center willing to have a traffic monitor
- Are parents required to sign children in and out of the facility

Ms. Poe explained that parents confirm drop off times in the agreement they sign with the center. Times will be staggered. There are 7 parking spaces available. If parents violate the agreement with the center, and block neighboring driveways etc. they will be issued a fine. Ms. Poe agreed to have a traffic monitor. State of California licensing requires that parents sign their children in, and out of the center. Child care staff will have children ready to go at the appropriate pick-up times. Public testimony was closed.

Member Clark asked if it would be appropriate to expand to Condition #5. Perhaps parents should receive a written warning prior to being issued a fine. The Chair commented that a warning might also be appropriate, as opposed to a fine. Vice Chair Peixoto said the Board should consider if planning staff should get involved with the monitoring of vehicle violations. Vehicle violations relate to the California Vehicle Code. Member Palmeri suggested the application be reviewed in a period of one year. If complaints are received from the neighbors, the Board can review and/or change Conditions of Approval as necessary. The property owner asked the Board if he could respond, as a result of the discussion taking place. Public testimony was re-opened.

The property owner, Mr. Daniel Davis said that he had run the child care center for a period of 14 years. In the past Conditions had never been imposed by the County. During that time period there were never any complaints. Parking was never an issue. Mr. Davis thought the proposed conditions were ridiculous, as the center had 40 kids on the site before, without any problems. Board Members had the following questions for the property owner:

- Does the property owner live on-site
- Is the rear of the property part of the child care center
- Are there immediate plans to clear the pile debris at the rear of the property
- Would the property owner object to a Condition of Approval, requiring the removal of all debris
- Are the neighbors aware that the child care center will be resume operations

Mr. Davis told the Board that he did not live on site. Ms. Poe will be leasing the space from him. Mr. Davis said he objected to a Condition of Approval regarding debris removal. He planned to remove the debris after the first of the year. The fenced area which contains the debris is not part of the child care facility application. The Chair said she was still concerned about possible parking issues. The prior child care program did not accept infants. It may take more time to drop off and pick up infants, as opposed to small children. Mr. Davis responded that most parents only leave infants for a few hours at time, as opposed to a full day. The neighbors are aware that the center will start up again. People in the neighborhood are used to child oriented operations. The Fairview Elementary School is located next to the center. Public testimony was closed.

The Chair asked County Counsel if the Board could add a Condition of Approval, requiring the applicant to remove the debris from the property. Counsel responded there was a sufficient nexus to add such a requirement.

Member Palmeri believed that Pre Hearing Recommendations #4 and #5 should be omitted. It is the responsibility of the applicant to track and follow through on vehicle violations. It would be too difficult for County Staff to track the record of patrons violating the day care's drop off & pick up policy.

Member Palmeri motioned to adopt the staff Tentative Findings, with the following modifications:

Pre Hearing Recommendations #4 and #5 should be omitted.

A Condition shall be added that the property owner shall remove all debris from the property, and be in compliance with the Neighborhood Preservation Ordinance within a period of 90 days.

Pre Hearing Recommendations #12 shall be modified to state: This matter may be set for rehearing one year after the date of this action by the Board of Zoning Adjustments for purpose of modifying any condition previously imposed, or adding conditions that may be required to guarantee the continuance of the affirmative findings contained herein. Any condition modified or added shall be of the same force and effect as if originally imposed. Review costs shall be borne by the applicant. Otherwise, expiration in 3 years on August 22, 2010.

Vice Chair Peixoto seconded the motion. The motion to approve the application as modified carried 4/0.

4. **VARIANCE, V-12069 - ROBERTO GOMEZ** - Application to allow the expansion of a nonconforming parcel, four feet side yard where 10 feet is required, with the construction of a new single family residence, in a R-S-SU (Suburban Residence, Secondary Unit) District, located at 20253 Concord Avenue, west side, approximately 200 feet south of Hampton Road, Cherryland area of unincorporated Alameda County, designated Assessor's Parcel Number: 414-0036-055-00. (Continued from July 11, 2007).

Staff informed the Board that the Alameda County Building Department had already issued a building permit for the project. Planning Staff was unsure of how a building permit was issued without their knowledge. However the Planning Department was in support of application approval. Board Members had the following initial questions:

- Could a former staff planner have signed off on plans sent to the Building Department
- Are photographs available of the work that has been completed thus far
- Are additional photos available of the entire site
- Has a "Stop Work Order" been issued for the project

Staff responded that although a signature was not present on the building plans, the original planner that worked on the project was no longer on staff. Photographs of onsite progress were not available. A Stop Work Order has not been issued. Under the R-S Combining District if a lot has the potential for two or less dwellings, the R-1 setbacks apply. Side setbacks requirements are 10 feet. The 4 foot side setbacks on the existing home are non-conforming, as they were created prior to Zoning in 1942. However as a result of the proposed expansion, the applicant must now seek a variance. The expansion proposed at the rear of the parcel exceeds more than a 50% deficiency of the Zoning Ordinance. The Chair called a brief recess at 3:00 p.m. to allow staff to locate additional photographs of the site. The meeting was reconvened at 3:07 p.m.

Member Clark asked staff if the semi attached method of connecting the new dwelling, and garage to the existing dwelling was allowed in the Zoning Ordinance. Staff explained that the proposal is to attach the single family dwelling and garage to the existing home by means of a breezeway. This is in compliance with the Ordinance. The new garage will also meet Ordinance Parking Requirements. Member Clark had the following additional questions:

- Has a landscaping plan been submitted for the project
- Does the proposal meet open space requirements
- Has the applicant removed the garbage and the vehicle from the property referred to in the complaint letter

Staff told the Board that they believe all of the items listed in the complaint letter had been removed from the property. The applicant has not submitted a landscaping plan. Public testimony was opened.

Mrs. Erica Campisi told the Board that she lives around the corner from the applicant. When she is on her balcony she can see the debris, and junk. The applicant has removed some of the items. However many items still remain. She went by the site prior to the meeting. Behind the residence there is a cargo container, a tent, and miscellaneous debris that are still left on the site. According to the plot plan submitted by the applicant there will be sufficient space remaining to continue to store the remaining junk. Mrs. Campisi asked the Board to put the application on hold until the applicant removes all of the junk and debris. The Chair asked staff if Code Enforcement had responded to the referral request. Staff confirmed that Alameda County Code Enforcement had no comment. Public testimony was closed.

Member Palmeri asked Planning Staff what would happen as a result of the following proposed scenarios:

- What would be the status of the building permit if the Board denied the planning application.
- What would be status of the building permit if the applicant were required to re-submit a more complete application which included a landscaping plan, and full compliance with all Neighborhood Preservation Ordinances.

Staff responded that if the Board denied the application, the Building Department would issue a red tag. The building permit would then be revoked. If the applicant was required to submit a landscaping plan and comply with NPO issues, a red tag and stop work order could also be issued. Member Palmeri said there appeared to be a lack of interest on the applicant's part in the status of the variance permit, as they did not appear at the hearing. The Chair asked staff if the pre-existing side yard was considered non-conforming since the home was built in 1942, prior to the Zoning Ordinance. County Counsel said the use was considered a legal non-conforming use. The Chair commented that the only other option appeared to be removing a portion of the existing home. The Vice Chair agreed this would not be a viable option. The Chair thought it would be appropriate to continue the application. A continuance would also give staff an opportunity to discuss the application with the Building Department. Staff told the Board that they received the information about the building permit issuance one day prior to the hearing. Staff's intent was to speak with the Building Department once the outcome of the hearing had been reached.

Member Palmeri motioned to continue the application to September 12, 2007 to allow the applicant to appear. The applicant should bring all NPO issues into compliance, and submit a landscaping plan at the

September 12th Hearing. Member Clark seconded the motion. Motion carried 4/0.

5. **VARIANCE, V-12072 – JOE & MARIA MENEZES** - 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 Cantle Avenue, unincorporated, Fairview area of Alameda County, designated Assessor's Parcel Number: 425-0090-015-00. (Continued from June 27, 2007).

Staff recommended approval of the application. The Chair announced that graphics had been submitted by a member of the public for the Boards review, at the beginning of the meeting. Public testimony was opened.

The Applicant, Mr. Joe Menezes said that he has lived in the neighborhood since 1973. His parents built the home in 1965, and have been long time residents of the cul-de-sac. Mr. Meneze's mother still lives in the home. The family would like to make improvements to the property. They feel the project will improve the neighborhood as well. They were very surprised to find there was opposition to the proposal. The height of the addition on the upper portion would only be 23 feet high. The only place that the height might exceed the 25 foot height limit is where the upper and lower portion of the home meet. Planning staff estimates the height at this point would be 28 feet. Mr. Menezes disagreed. The Chair asked staff if the height noted in the staff report was obtained by averaging. Staff confirmed this was the case. The highest point of the grade and the lowest point are used to arrive at the calculation. Mr. Menezes believed his measurement was accurate, and acceptable. He could not understand why height would be an issue, as there is no View Ordinance that exists in the Unincorporated County. If someone were to build in the lot next to his home, his view would be blocked. Currently, trees block many people's views. He pointed out that if a line of site was carried out from the east side of his house (the high side) all the way to the lowest portion, the height would only be 23 feet, 5 inches. Mr. Menezes said that he consciously designed the proposal with 8 foot ceiling heights as opposed to the more popular 10 foot ceiling heights. The Chair asked Mr. Menezes the following questions:

- What is the current height of the home
- Will the roof height be increased beyond the height of the existing home's roof

Mr. Menezes said that he was unsure of the exact roof height of the home. However the roof height will be increased. Staff said they did not know for sure but guessed the height to be approximately 15 feet high at the lowest point, up to 29 feet at the highest point. The Chair commented that the overlays submitted by the neighbor suggest the proposed roof height will be higher than it is now. Mr. Menezes disagreed, and did not believe the overlays submitted by the neighbor were correct. The roofline on the downhill side would be lower than what is portrayed.

Mr. Menezes said his Architect told him that if the roofline were lowered, it would result in the removal of the upstairs rooms. The proposed design will be 3,600 square feet. The design plane will allow a balance of sun and shade etc. Mr. Menezes then referred to Tentative Finding#3 in the staff report: As conditioned, the application would not be detrimental to persons or property in the neighborhood. He realizes views are seen as a valuable asset on a cul-de-sac. He reiterated that the design will be 25 feet in height, not the 28 feet that the Planning Department suggests. The County does not have a View Ordinance. He could not understand why view would be a consideration regarding his application. Mr. Menezes then presented a photo, and compared the neighboring home in relation to his own. Additional

Board questions for the Applicant were as follows:

- What is the estimate of how much the roof line would change
- Will the proposal require a new curb cut and driveway
- Will a Public Works Encroachment Permit will be necessary
- If so how will the entrance differ from that of other homes in the area

Mr. Menezes said the roof line would change by about 8 feet. He asked the Board to approve his project, and hoped the neighbors understood that he was not trying to ruin anyone's view. Staff clarified that the existing curb and access to the driveway would require removal. They would be replaced with standard curb, gutter, and sidewalks. This would be similar to those already in existence, in the neighborhood. Only the driveway design would differ from that of neighboring properties. An encroachment permit would be required.

Ms. Judy Armstrong said that she lived at 3486 Bridle Drive. She acknowledged that she is not an architect. However the issue she shares with eight other neighbors is that the proposed architecture is not consistent with the neighborhood. Properties in the neighborhood are 1 or 2 story. The proposed addition will obscure the view of five separate residences. There will be major privacy issues, which will have life changing impacts. The proposal, will impact the neighborhood. She asked the Board to refer to the letter she submitted which offered more detail. Ms. Armstrong did not believe the project was consistent with the County Height Ordinance. She consulted an architect to do the overlay that was presented. Ms. Armstrong said that she worked for 35 years. She is now retired and spends a great deal of time at home. Her privacy will be directly impacted. The view from her home is a westerly view. There is a sliding glass door, out of which she can see the Bay. If the project goes through she will have to keep the door closed. The Chair asked Ms. Armstrong where her home was located in relation to the applicant's. Ms. Armstrong explained she lived uphill, 3 houses from Mr. Menezes.

Ms. Mary Tureoud told the Board that she did not understand the need for the applicant to have a 3 story home. The Chair responded that when a house is on a slope, the design is seen as split level. Ms. Tureoud pointed out that the garage will be placed on the downward slope. The center of the house will be built up as well. She asked staff to describe the proposal in more detail. Staff responded that the Zoning Ordinance defined the building as a "two story". The ground floor is less than 12 feet, and the ceiling is no more than 6 feet from grade. The garage is not counted as a story because it will not increase by more than 50% of the prior floor area. Member Clark observed that if the design were inverted it would comply with the Zoning Ordinance. However it may still interfere with surrounding views.

The Applicant, Mr. Menezes returned to testify, and referred to photographs of Ms. Armstrong's home across the street. He explained that there was one home in between the residences. The Chair asked if Ms. Armstrong's home was directly across the street. The Applicant clarified that Ms. Armstrong's home was at a slight angle. She would maintain a view toward San Mateo. The peak of his proposed addition will fall within an area that already contains trees. Mr. Menezes added that the section in which she has a view was created as a result of remodeling. It did not exist as part of the original home layout.

Ms. Armstrong returned to testify, and referred to Mr. Meneze's photographs. She explained that the deck and addition were added to the bedroom of her home. The photographs shown earlier were not from the bedroom deck. In any case, a major portion of her view will be blocked if the Meneze's build the addition. She believed that in America someone should not tell her that her view can be reduced by 30%, and that is sufficient. She should be able to make that decision. If the Meneze's plan is implemented, the South County view from her home will be blocked.

Mr. Menezes was in disagreement. He said that the graphic projection submitted by Ms. Armstrong was inaccurate. Public testimony was closed.

Member Palmeri said that several findings would have to be made for the Board to grant the variance application:

Regarding Tentative Finding #1, Special circumstances applicable to the property: There do not appear to be any. All of the homes in the neighborhood are built on a slope, and are roughly the same in height. The Board is not aware that any other height variances have been granted in the neighborhood, or vicinity.

Regarding Tentative Finding #2, Will granting the application constitute special privilege: Based on Tentative Finding #1, it would be difficult to establish that granting the variance would not be special privilege. All of the lots in the neighborhood are the same. The homes are also similar. To grant a height variance for one home would be special privilege.

Regarding Tentative Finding #3, Will the granting of the application be detrimental to persons or property: The request is for a variance to the County Height Ordinance. Although some surrounding areas have a View Ordinance, the County does not. Taking into consideration the character of the neighborhood, and the impact on the quality of life for all neighbors. It would not be a stretch to determine that the project would have a detrimental affect, on the quality of life in the area.

Member Clark said that she slightly disagreed with Member Palmeri's comments regarding Findings #1 and #2. However she was in agreement with Findings #3.

The Chair also agreed with Member Palmeri's comments regarding Finding #3 based on testimony presented. However there appears to be conflicting testimony as to the impact of the proposal. The Chair asked staff if they could produce an overlay graphic of the project. Staff responded that the application had been continued from the June 27, 2007 for the applicant to create an overlay. Member Palmeri recalled the discussion that ensued at the June 27th Hearing. Using the juniper trees in a photograph as a reference, Member Palmeri estimated an approximate height for the proposed roof line. It did appear when the exercise was performed that views would be eliminated. The Chair asked staff if the Applicant had considered raising the roofline only 3 feet or 4 feet. This could be a compromise that may allow them to still achieve their design goals.

Vice Chair Peixoto did not believe a special circumstance was present. He pointed out that all of the lots in the neighborhood were the same. He also acknowledged that the County did not have a View Ordinance. Perhaps the grade of the site could be altered by soil, removal. Member Palmeri responded that the variance finding would still have to be made. The Chair added that if soil were removed, a retaining wall may then be necessary. Perhaps the Applicant would like a continuance in order to create an overlay detailing the impact of a 3 foot or 4 foot increase in the roof line. Public testimony was re-opened.

Mrs. Michelle Menezes told the Board that originally the simulation was as a result of Ms. Armstrong's request. They did price the service. It would cost \$3,000 dollars. They did not wish to pursue that option. The Chair said that there other methods available. Mrs. Menezes said she and her husband also discussed alternate designs. However if they added to the rear of their property this would block more views. The pitch of the roof is an issue. The current proposal is not the first design. The architect has already considered many different options. At this point a new design would result in a change to the plans. Additional Board questions were as follows:

- What method is used to measure the height of the home

- Would the garage be at the lowest roofline
- How much of the roof height would need to be lowered to comply with the County Ordinance
- Can the height of each level be reduced to impact the total overall height of the home

Staff said that height is measured from the lowest finished grade to the highest point of the roof. Another measurement is also taken from the highest point of the roof to the highest finished grade. All of the measurements are then averaged. Staff estimated that the applicant would need to take a total of 6 feet from the roof line in order to be in compliance. It may be possible to deduct a portion of the desired height from each level of the design. Mr. Menezes returned to testify. He clarified that there was no way to remodel the existing home in its present state, and meet their design criteria. It would be necessary to add another level. The Chair asked Mr. Menezes if he would like to continue the application. Mr. Menezes asked the Board what changes were necessary in order to gain approval of the application. The Chair told Mr. Menezes he would need to make the required variance findings. At this juncture, it did not appear the findings could be made. If he were to consider producing a simulation, an aerial creation would not be necessary. However Mr. Menezes should submit proposals that indicate what a modified roof line would look like. This should help to satisfy the needs of all parties concerned. Public testimony was closed.

Member Palmeri said the applicants may want to consider another method of establishing building heights. For example the applicant could work with a surveyor or civil engineer to establish an elevation (above sea level) of the existing home. Once an accurate height is established, estimations can be added to that know figure. The same process can be used to establish a height for the Armstrong's property. This method is scientific, and can also give the parties an accurate method of determining the height of each home in relation to other buildings. The parties can then modify roof pitches in a virtual format. This lets the applicant consider the possibility of reducing the roof pitch. Photographs can be deceptive, and are not a reliable method of determining height, due to possible distortion.

The Chair asked Mr. Menezes if he wanted to consider a 60 day continuance. Mr. Menezes agreed, but asked the Board to hear the application prior to the 60 day period if the application was ready. He would like to move forward as soon as possible with the project. The Board Members agreed.

Member Palmeri motioned to continue the application to October 10, 2007. Member Clark seconded the motion. Motion carried 4/0.

APPROVAL OF MINUTES: The Chair continued the Minutes of May 23, 2007 to give former Member, Lester Friedman an opportunity to review and make any corrections. The May 23, 2007 Minutes will be moved to the September 12, 2007 Meeting.

Vice Chair Peixoto motioned to approve the Minutes of July 25, 2007 with submitted corrections. Member Clark seconded the motion. Motion passed 3/0. Member Palmeri abstained, as he was not present at the Meeting of July 25, 2007.

STAFF COMMENTS & CORRESPONDENCE:

BOARD'S ANNOUNCEMENTS, COMMENTS AND REPORTS: Board Members asked staff the following questions:

- Is it possible to have two residential care facilities operating on one parcel of land

- Would the fact that one operator oversaw both facilities have any impact
- What is the status of the BOS Determination regarding mobile restaurants

Staff explained that a person could feasibly have two buildings on one parcel with less than six residents per building. This would not trigger the zoning rules regarding residential care facilities. However once the number exceeded six in either building this would trigger a CUP, and State permit requirements etc. for residential care facilities.

Mobile restaurants will be considered on the next BOS Meeting. Staff will report back on the outcome. Vice Chair Peixoto responded that a determination should be made in light of the fact that two mobile businesses have continued to operate, awaiting the determination.

Member Palmeri asked staff for an update on the status of a CUP Application in 2002, regarding a day care center located in a building that Alameda County Fire deemed uninhabitable.

Staff responded they did not remember the exact location of day care center but they would research the matter and report back at the next meeting.

Vice Chair Pexioto asked Code Enforcement staff to investigate an on-going garage sale on Harmony Drive & East Lewelling Boulevard. The sale takes place on a daily basis.

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

CHRIS BAZAR - SECRETARY
WEST COUNTY BOARD OF ZONING ADJUSTMENTS