

**MINUTES OF MEETING
WEST COUNTY BOARD OF ZONING ADJUSTMENTS
SEPTEMBER 13, 2006
APPROVED OCTOBER 11, 2006**

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

FIELD TRIP: 1:00 p.m.

MEMBERS PRESENT: Members Frank Peixoto, and Dawn Clark-Montenegro.

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

OTHERS PRESENT: Phil Sawrey-Kubicek, Senior Planner.

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

1. **ABDUL NOOR MAYER, CONDITIONAL USE PERMIT, C-8490 –** Application to remodel an existing service station by replacing the pump island canopy and business signage; to renew a Conditional Use Permit; and to allow the sale of alcohol, in a C-1 (Retail Business) District, at 18501 Hesperian Boulevard, west side corner south of Bockman Road, unincorporated San Lorenzo area of Alameda County, designated Assessor's Parcel Number: 412-0085-003-03.
2. **PETER TON, CONDITIONAL USE PERMIT, C-8518 –** Application to allow the continued use of an auto body shop, in a C-2 (General Commercial) District, located at 22008 Meekland Avenue, northeast side, approximately, 125 feet, northwest of Poplar Avenue, unincorporated Cherryland area, designated Assessor's Parcel Number: 429-0064-054-02.
3. **ASHOKEE KERR, CONDITIONAL USE PERMIT, C-8519 and VARIANCE, V-12033 –** Application to allow expansion of a non conforming church (reduced setbacks and parking) by adding a 223 square foot addition, providing restrooms with Americans with Disabilities Act guidelines, in an R-2-B-E (Two Family Residence, 8,750 square foot Minimum Building Site Area) District, located at 15602 Maubert Avenue, northeast side, approximately 50 feet southeast of Mono Avenue, unincorporated Ashland area of Alameda County, designated Assessor's Parcel Number: 080-0046-013-00.
4. **ARNOLDO HERNANDEZ, VARIANCE, V-11978 and SITE DEVELOPMENT REVIEW, S-2051–** Application to allow the conversion of an existing attached one car garage to living space and provision of two uncovered spaces in the rear, in an R-1-CSU-RV (Single Family Residential) District, located at 4421 Alma Avenue, south side, approximately, 770 feet west of Brickell Way, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 084C-0820-014-00.
5. **SAMUEL HERNANDEZ, VARIANCE, V-12024 –** Application to allow: 1) a nine foot rear yard where 20 feet is required; and 2) a three foot, three inch side yard where seven feet is required with the conversion of a storage building into a

dwelling in an R-S-SU (Suburban Residence, Secondary Dwelling Unit) District, located at 566 Cherry Way, north side, approximately 400 feet east of Haviland Avenue, unincorporated Cherryland area of Alameda County, designated Assessor's Parcel Number: 429-0019-015-00.

6. **FRANK CISNEROS, VARIANCE, V-12025** – Application to retain an existing six foot high wooden fence where four feet is the maximum allowed in an R-1 (Single Family Residence) District, located at 22635 Bayview Avenue, west side, approximately 220 feet south of Jacobs Street, unincorporated Fairview area of Alameda County, designated Assessor's Parcel Number: 417-0299-030-00.

REGULAR MEETING: 6:00 p.m.

MEMBERS PRESENT: Members Frank Peixoto, Chair; Ron Palmeri; 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 9 people in the audience.

CALL TO ORDER:

The meeting was called to order by the Chair at 6:00 p.m.

ANNOUNCEMENTS BY THE CHAIR: The Chair made no announcements.

OPEN FORUM:

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

No one requested to be heard under open forum.

CONSENT CALENDAR:

1. **GUADALUPE LOZA/FRED FULCHER, CONDITIONAL USE PERMIT, C-8271**– Application to allow continued operation of a drive-in business (catering truck), in a PD-ZU-1487 (Planned Development, 1487th Zoning Unit) District, located at 691 West A Street, north side, corner, northwest of Royal Avenue, unincorporated Hayward area of Alameda County, bearing Assessor's Parcel 0432-0016-035-00. (Continued from February 11, April 14, April 28, May 26, July 14, September 8, October 13, 2004, March 23, June 22, October 12, December 14, 2005, and March 22, May 24, 2006; to be continued without discussion to November 15, 2006).
2. **FRANCISCO PENA, CONDITIONAL USE PERMIT, C-8389** – Application to allow the operation of a temporary outdoor business (Catering Truck) in a TC

(Transit Corridor) District, located at 16211 East 14th Street, southwest end of 162nd Avenue, unincorporated Ashland area of Alameda County, designated Assessor's Parcel Number: 080C-0479-003-00. (Continued from January 11, March 22 and May 24, 2006; to be continued without discussion to November 8, 2006).

3. **ABDUL NOOR MAYER, CONDITIONAL USE PERMIT, C-8490 –** Application to remodel an existing service station by replacing the pump island canopy and business signage; to renew a Conditional Use Permit ; and to allow the sale of alcohol, in a C-1 (Retail Business) District, at 18501 Hesperian Boulevard, west side corner south of Bockman Road, unincorporated San Lorenzo area of Alameda County, designated Assessor's Parcel Number: 412-0085-003-03. (To be continued without discussion to September 27, 2006).

A request to speak was submitted by Mr. Bill Burkhalter. The Chair announced that the item would be removed from the Consent Calendar and placed at the end of the Regular Calendar. The Board will accept public testimony however no action will be taken on the Agenda Item.

4. **RAYMOND WONG / TONY TANG / FONG & FONG, PARCEL MAP, PM – 8605 – and VARIANCE, V-11987 -** Application to subdivide one parcel measuring 20,568 square feet (0.47 acres) into two parcels, resulting in median lot widths respectively of 62 feet, six inches and 47 feet, six inches where 80 feet is required in an R-1-B-E-CSU-RV (Single Family Residence, 10,000 square foot Minimum Building Site Area, 80 feet Median Average Width, Secondary Unit with Recreational Vehicle) District, located at 17472 Almond Road, north side, approximately 600 feet southwest of Vineyard Road, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 084D-1250-031-01. (Continued from June 14, July 12 and August 9, 2006; to be continued without discussion to October 11, 2006).
5. **PHOI PHAN, VARIANCE, V-11951 –** Application to allow construction of four dwelling units with: a) A five foot side yard; b) a two foot driveway set back, raised to four feet; c) 1,536 square feet of open space where 2,400 square feet of open space is required; d) no sidewalk; and e) A 13 foot wide driveway where 16 feet is required in an R-S-D-20 (Suburban Residence, 2,000 square feet Minimum Building Site Area per Dwelling Unit) District, located at 230 Laurel Avenue, north side, approximately 400 feet west of Princeton Street, unincorporated Cherryland area of Alameda County, designated Assessor's Parcel Number: 429-0091-058-00. (Continued from April 26, June 28 and July 26, 2006; to be continued without discussion to October 11, 2006).
6. **ALEXANDRU TET, VARIANCE, V-12016 –** Application to allow conversion of an accessory structure into a secondary unit with A) a one foot rear yard setback where 20 feet is required; B) a two foot, eight inch side yard where six feet is required; and C) eight feet between structures where 10 feet is required in an R-1-CSU-RV (Single Family Residence, Secondary Unit, Recreational Vehicle) District, located at 18787 Carlton Avenue, southwest side, approximately 255 feet southeast of Sydney Way, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 084B-0420-004-03. (To be continued without discussion to October 25, 2006).

Member Pexioto motioned to accept the Consent Calendar as modified. Member Spalding, seconded the motion. Motion carried 5/0.

REGULAR CALENDAR

1. **PETER TON, CONDITIONAL USE PERMIT, C-8518** – Application to allow the continued use of an auto body shop, in a C-2 (General Commercial) District, located at 22008 Meekland Avenue, northeast side, approximately, 125 feet, northwest of Poplar Avenue, unincorporated Cherryland area, designated Assessor's Parcel Number: 429-0064-054-02.

Staff recommended approval of the application. The applicant has obtained renewal of the spray booth permit. Mr. Ton is currently waiting for the final inspection by the Building Department. Member Friedman asked if all the conditions from his prior use permit had been met. Staff said presently the spray booths are the only condition in compliance. The balance of the required conditions, are not in compliance. The Chair asked what time frame the last permit required for completion. Staff confirmed 90 days. The Chair pointed out that now three years had passed. Staff clarified they had just made contact the property owner. The owner said he was unaware that a final inspection was required with the prior use permit. Public testimony was opened.

No requests to speak were submitted. Staff interjected that the applicant was present but apparently did not wish to speak. Public testimony was closed.

Member Spalding said she was surprised that the applicant did not want to take the opportunity to speak. Staff added that Mr. Ton had a scheduled appointment for final Building Inspection sign off.

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

2. **JOSEPH WILLIAMS, CONDITIONAL USE PERMIT, C-8494** – Application to allow an "A" type Service Station (smog test only) , in an M-1 (Light Industrial) District, located at 335 West A Street, north side, approximately 500 feet east of Hathaway Avenue, unincorporated Cherryland area of Alameda County, designated Assessor's Parcel Number: 429-0077-019-02. (Continued from July 12 and August 9, 2006).

Staff reminded the Board the application had come before them on July 12 and August 9, 2006. The application had been continued to allow the applicant to prepare plans for façade and parking improvement, and landscaping. The recommendation was approval. Board questions for staff were as follows:

- What is the definition of a Monument Sign
- Are there limitations regarding the number of signs on the property
- What are the size limitations regarding signage on the property
- Have all drainage issues been resolved
- Does the City of Hayward have any issues with the project
- Has the applicant considered adding trees in the rear of the property

Staff said the applicant has proposed signage on the fence and building. The maximum allowed is 40 square feet. Monument signage would not apply to this property because it does not have a secondary

frontage to the public right of way. Other qualifying aspect would be a corner or parking that wraps around the building. This building has neither. More will be known about any possible drainage issues when the landscaping plan is submitted. As a result staff has not discussed additional trees however that stipulation can be made a condition of final approval. The City of Hayward has no objection to the project. Public testimony was opened.

The applicant, Mr. Joseph Williams told the Board he would respond to any questions. Member Clark asked Mr. Williams if he would consider incorporating trees into the rear of the property. Mr. Williams explained that the complex was currently under construction. There is a huge retaining wall. In addition there is also a great deal of concrete coverage. However he is amenable to additional greenery. Mr. Williams told the Board he plans to install the landscaping himself. He does realize that Community Development has funds available for property improvement but the process takes time. A person is only eligible to apply for the funds after they have received permit approval. Currently there are three trees on the side of the property. They are well rooted and do not require water. Pruning takes place once a year. Member Pexioto pointed out that the building needed a lot of work. It may not be worth the hassle to bring all of the issues into Building Code compliance. Mr. Williams said he had discussed the scope of the project with BID. He will be able to comply with all requirements, including converting the restrooms into handicapped accessible. Member Spalding asked if Mr. Williams had read the staff report. Her concern was that he would have difficulty complying with the condition regarding weeds. Member Spalding pointed out it would also be difficult for staff to enforce the immediate replacement of dead plants. Mr. Williams acknowledged that he had only received the staff report yesterday however he did have a chance to review the report. His only question was regarding the definition of weed, and the maximum height acceptable for plant material on the property. Public testimony was closed.

Member Spalding suggested staff modify Condition #7 so the applicant would have a clear understating as to what maintenance is required. Condition #7 should add that all plants and landscaping be maintained in good condition. Dead plants shall be replaced within 5 business days. Pruning shall be omitted. The landscaping plan dated July 7, 2006 is applicable to the project. Member Clark strongly urged Mr. Williams to follow through with the property improvement loan through Community Development. Additional trees in the rear of the property would have a dramatic impact.

Member Spalding motioned to adopt the staff recommendation of approval subject to the recommended modifications. Member Clark seconded the motion with the following addition. The permit shall expire on September 13, 2009. Motion to approve the application carried 5/0.

3. **THOMAS VAN VOORHIS, VARIANCE, V-11963** – Application to effect a boundary adjustment and thereafter approve as two building sites that are reduced in area from the required 100 acres (under Alameda County General Ordinance Code Section 17.06.060) to five acres and 73 acres in an “A” (Agricultural) District, located at 22000 Eden Canyon Road, southeast side, approximately 1.4 miles north of Interstate I-580, rural canyons area of Castro Valley, designated Assessor’s Parcel Number: 85A-2201-012-00. This is a referral by the Board of Supervisors to consider an alternative approach to establishing building sites and report back to the Board.

Staff reviewed the history of the application. The original variance application went before the Castro Valley Municipal Advisory Council and the West County Board of Zoning Adjustments in February, 2006. The application was denied by the BZA. The applicant then filed an appeal with the Board of Supervisor’s. As a result of discussion during the appeal process the Board of Supervisors requests that the BZA review the submitted alternate approach, and report back with a recommendation. The CVMAC approved the revised submission by a 6/0 vote.

The Chair asked staff to clarify that the BZA was to offer a recommendation as opposed to an action. Staff confirmed a recommendation was requested. The Chair then asked County Counsel to elaborate on what was new regarding the current submission. County Counsel referred to the Previous Board of Supervisors Action contained in the staff report. The approach is to grant a request for building site status for the smaller, 2.17 acre parcel. Subsequently a lot line adjustment could then be effected. This process would avoid granting a variance for minimum lot size. This should allay the concern of potential conflict with Measure D. The Chair said his concern was that the BZA would recommend approval, then have to rely on hope that the applicant will follow through with a lot line adjustment to create a 5 acre parcel. It might appear that establishing building site status prior to a lot line adjustment to be putting the cart before the horse. County Counsel reminded the Board that the applicant would like to sell one parcel in order to provide funds to make improvements to an access road. The improvements include adding a bridge that crosses a stream. This would then afford him the ability to construct a road that meets the stringent conditions required by the Department of Fish & Game. Establishing building site status on two separate parcels, and then effecting a boundary adjustment, allows each parcel to be independent. The process may assuage any concerns with Measure D conflicts. The Board of Supervisor's thought the recommended sequence was appropriate.

Initial Board questions were as follows:

- Would this new approach be considered two separate determinations:
 - 1) A determination for building site status; and
 - 2) A determination as to the necessity of a boundary adjustment
- Can building site status be a condition of the proposed lot line adjustment
- Would a determination of building site status be necessary only on the smaller parcel
- Would building site status remain on larger parcel
- Can a restriction be placed on each parcel limiting development to a maximum of one habitable dwelling per parcel
- Can a condition be set that a boundary adjustment be contingent on a minimum parcel size of five acres
- Are the Certificates of Compliance issued in 2004 acknowledgement that two parcels exist
- Is a lot line adjustment more appropriate than a boundary adjustment
- Is this new approach considered to be a variance on building site status
- Is this new approach considered to be a variance on parcel size
- If the BZA makes a recommendation can that be considered a precedent

Counsel responded that the BZA could recommend that an application for a joint lot line adjustment be considered with the establishment of building site status. That particular method may be closer in terms of conflicting with Measure D because you are establishing a parcel less than 100 acres. Member

Spalding then asked if this could be viewed as a case of the BZA recognizing that the smaller parcel is an existing building site whereby a boundary adjustment could be effected. Counsel responded that one could argue that if you are processing a boundary adjustment, this is not an existing parcel. The Board of Supervisors envisioned that building site status would be established first. Then the applicant would effect a boundary adjustment. The applicant can then follow through with some of the conditions the BZA has discussed thus far, like five acre minimum parcel size and limiting habitable structures to one per parcel. The BZA has the flexibility to recommend a range of conditions. The Certificates of compliance issued in 2004 verify that two parcels exist. The certificates verify that the 80 acre parcel was created in 1967, and the smaller 2.17 acre parcel was created in 1968 as a result of a land swap with the adjoining property owner. Grandfather provisions confirm that two parcels exist due to the fact that the parcels were created prior to the May, 1972. After 1972, zoning requires that new parcels be a minimum of 100 acres. Although acknowledgment of the two parcels is not disputed the smaller 2.17 acre parcel never had building site status, only the larger 80 acre parcel. The larger parcel has retained its building site status. Counsel explained to resolve the building site issue for the smaller parcel the current recommendation is to grant a variance request to the building site requirement. The Zoning Ordinance, 17.06.060, requires a parcel be a minimum of 100 acres. The issue of parcel size can then be addressed via boundary adjustment. County Counsel, Brian Washington told the Board they had broad discretion in making a recommendation regarding the request. Public testimony was opened.

Mr. Van Voorhis brought up the fact that the current staff report had remained unchanged since the last hearing. Staff interjected that a summary of the Board of Supervisors actions were added to the report. The request is that the BZA make recommendations based on the BOS summary, testimony, and staff input. Mr. Van Voorhis pointed out an error in the original staff report which stated there is one single parcel. He confirmed that there are two parcels. There are no dwellings on either parcel, only a tool shack. He then showed enlarged photos. Thus far in the application process he tried to process a lot line adjustment. He was told by Planning that he needed a variance to obtain building site status. Many issues are present on the property. The only buildable area on the site is the meadow area however the meadow area is split between the two parcels. Without a lot line adjustment he would not have a building site. Another issue is the seasonal creek that runs through the property. Fish and Game presented him with a \$104,750 dollar mitigation request if he were to touch the creek bank. A large amount of money would be required up front. The Fire Department gave Mr. Van Voorhis approval to establish a 25% grade just off of the road area. The existing grade down to the creek is 27%. Fire requests that a limit of two homes be built on each parcel. The road should strictly be used to access the homes. In response to a question that was raised at prior BZA hearing, as to how variance findings could be made to support his case. Mr. Van Voorhis submitted material which he believed supported all variance findings. He pointed out that his situation was not completely unique. A similar case had occurred in East County. The solution was that each parcel be limited to, one home per parcel. He would be amenable to that solution, and would record deed restrictions on each parcel. There would be no impediment to adjoining properties due to the size of his property, and the fact the buildable portion was located down in the meadow area. Regarding equity, Mr. Van Voorhis believed State Law and County Ordinance supported the fact this was an unusual situation, and a variance was appropriate. Because there is a seasonal creek on the property he has to comply with the Water Quality Board, Fish and Game and other agencies.

Member Pexioto asked the applicant if he will live on the smaller or larger parcel. Mr. Van Voorhis responded the parcel he eventually lives on will be determined by which one can be sold. Member Spalding commented that each lot appeared to have a separate set of circumstances but in order to utilize the buildable area on either parcel a boundary adjustment was necessary. Mr. Van Voorhis explained that when he obtained the property in 1968, he was given a minor sub-division map by the prior owner. The map was for 12 lots. At the time all that was necessary to effect a boundary adjustment was to sign the deed and take it to the Records Office. Unfortunately, during that period he was very busy and did not

get around to it. However now he is trying to determine how to move forward with his plans. The current proposal can be accomplished without stepping on anyone's toes. The property is now used for grazing. The income received is approximately, \$800.00 per year.

Additional questions from Board Members were as follows:

- How large is the property frontage
- How large is the easement
- What is the highest point of the property
- What is the lowest point of the property
- Can the second parcel be designated as a minimum of 5 acres

Mr. Van Voorhis said the frontage was 700 feet. Roughly, 60 feet of the frontage was useable however approximately 30 feet of that area drops down due to slope. There is a 20 foot easement that can be used to access the property. The highest point of the property is 1,000 feet. This area is approximately, 1,700 feet from the road. The road is at 600 feet. The smaller parcel can be made larger than 5 acres however due to the hilly terrain most additional acreage will not be usable. The terrain is steep and begins to rise in the area adjacent to the meadow. A pick-up truck is needed to access the area, and installing an additional service road would be difficult. Member Friedman responded that designating a parcel larger than 5 acres might be helpful in terms of meeting the perception of the community.

The Chair said what bothered him at former and present hearing was the original land swap with the neighboring property. That swap was to provide useable frontage for the larger lot. Mr. Van Voorhis explained that he was not involved with the transaction at the time but he was able to speak to the widow of the original property owner. The swap was done to create a sensible building site. The Chair asked why Mr. Van Voorhis had sought two Certificates of Compliance in 2004. Mr. Van Voorhis said the deed for the property mentions two separate parcels. As a result he had the two separate parcels recorded at the Assessors Office to correspond with the deed, and for tax purposes. The Chair pointed out that the size of the parcel was 2.17 acres. This did not meet the 5 acre minimum required at the time of Mr. Van Voorhis purchase. Mr. Van Voorhis responded that at the time there was a process by which you could through the Zoning Administrator to have a parcel categorized as 5 acres.

Additional questions posed by the Chair are as follows:

- Would granting the small parcel a status of 5 acres be more than a minor relaxation of the Zoning Ordinance
- What are the special circumstances present on the property to warrant the granting of building site status

The Chair clarified that the minimum lot size per dwelling unit was 2.5 acres at the time Mr. Van Voorhis purchased the property. Five acres was the minimum acreage required for building site status. Mr. Van Voorhis said that the General Plan allows for building site status to be established through a variance if all of the mandated variance findings can be made. A variance can be granted in this case because shape, topography and surroundings are present. On the property there is a unique access issue, due to the topography. It is the only property in the area with such dramatic topography. The property cannot be accessed without major work. Selling one lot to install improvements is a method to defray costs so improvements don't exceed what the property is worth. The Chair pointed out that the possible cost to provide access cannot be a consideration when granting a variance. Although funding is a practical

consideration, cost is not a special circumstance. Member Pexioto commented that if you could not build due to access as a result of topography that appeared to be a special circumstance. He also believed the finding for special circumstance may need to be determined separately for each parcel. It appears the larger parcel #1, has an access issue, and the smaller parcel #2 has a special circumstance due to the boundary located between the two parcels. The Chair disagreed. If someone gave the applicant a million dollars he could build a bridge. That bridge could allow access. The cost would be high but access would be achieved. Mr. Van Voorhis responded that a man can be put on the moon however cost is still an issue. In any case he would still have problems due to the meadow area. Neither lot can utilize the buildable area until a boundary adjustment is done. The Chair there said he was cognizant of the costs associated with development but the Board still has to grapple with the issuance of making the finding for special circumstances. The reason he voted against the application before was that a variance is a minor relation of the Ordinance, a change of not than more than 50%. If the parcel is 2.17 acres, that is closer to less than 50% of five acres. County Counsel said he agreed with the general analysis thus far however the Board also has broad discretion in making determination of special circumstances regarding building site status. The Chair did acknowledge that the BZA was asked to solely give a recommendation. Member Pexioto then referred to Zoning Practice, relating to State Law that states, the standard of hardship is related to the physical circumstances of the property, not the person who owns it. In addition another determination states that financial hardship, benefit or worthiness of the project is not a consideration in determining whether to approve or disapprove a variance.

Mr. Van Voorhis responded that the economic issue was caused by terrain. The specific issue was reviewed thoroughly by the Board of Supervisors. Current zoning with Measure D would allow one primary and one secondary dwelling. The BOS proposed to limit each parcel to one house. This is less than Measure D requires, and should allay any concern with increased density. The common sense of the issue is that he has owned the property for 33 years and would like to use it. The CVMAC was in agreement with the new proposal. He would like the BZA to agree as well. The Chair pointed out that circumstances on the parcel could change in the future. Member Spalding asked if the homes in the area with 2.5 acre lots received approval from the Zoning Administrator. Mr. Van Voorhis did not believe that was the case. He is aware of one parcel in the area that is 2.5 acres and one that is 1.96 acres. All of the neighboring homes were in existence when he purchased his property in 1968. The Chair surmised the lots in area were in existence prior to zoning.

A neighbor of Mr. Van Voorhis spoke to the Board. Mr. Bob Spinardi lives at 21500 Eden Canyon Road. He told the Board that he knew the applicant's property well, and drives by it everyday. The property is located at the 1.6 mile marker. His property is at the 1.9 marker on Eden Canyon Road. The Van Voorhis property is a quarter mile away from his. It is so large that he did not even realize until today that it borders his own. He told the Board he was shaking his head at how a practical solution could be thrown out because the BZA was looking at the letter of the law. Mr. Van Voorhis owns 80 acres. Most other parcels in the area, including his own are 20 acres or smaller. The character of the canyon will not change if the application is approved. The property is so large that the closest neighbor is a quarter mile away.

Mr. Van Voorhis has bent over backward through the application process. In his opinion Mr. Van Voorhis had been unjustifiably run through the mill as the owner of such a large parcel. Mr. Spinardi believed that the intent of Measure D was not to prevent a man from using his own property. He asked the Board to use wisdom like King Solomon, and find in favor of the application. Mr. Spinardi closed and said the right decision should be made, not one based on Board Members covering themselves.

Member Spalding said based on discussion thus far everyone is in agreement that two parcels exist as opposed to one. Great progress has been made regarding the application in recognizing the fact two parcels exist. In addition, it does not appear the application will impact the neighbors. Public testimony was closed.

Member Pexioto then asked the other Board Members if they now believed the parcel did have a deficiency that would not allow it to meet basic lot requirements, and impediments that prevent the owner from enjoying the property. Board Members confirmed the deficiency was namely access. Member Pexioto commented, that being the case. The General Plan will allow building site status to be established if all variance findings can be made in the affirmative. In this case special circumstances are present on the property due to access. There would be no grant of special privilege because the site is unique in its lack of access. Granting building site status would not be detrimental because the closest neighboring parcel is ¼ mile away.

Member Clark said her observation was that the facts were simple. Even though the boundary adjustment was not effected to bring the parcel into compliance at that time Mr. Van Voorhis purchased it in 1968. It is clear the intent of the applicant was to build on each parcel

Member Friedman motioned to recommend to the Board of Supervisor's that special circumstances were present on the property due to the size and topography. It would not be a grant of special privilege to grant the 2.17 acre parcel building site status due to the lack of access, specific to the property. Due to the overall size of parcel #1 and #2 there would be no harmful impact to persons in the neighborhood. Conditions should be imposed that require that each parcel be, a minimum of 5 acres; A deed restriction should be placed on each parcel, limiting each to not more than one dwelling. Member Pexioto seconded the motion. The Chair called for the vote. All Members were in favor of the recommendation. Motion to forward the recommendation regarding 22000 Eden Canyon Road to the Board of Supervisors was carried 5/0.

4. **ALFREDO GONZALEZ, VARIANCE, V-11989** – Application to allow construction of a seven foot, six inch high fence where four feet, zero inches is the maximum height allowed, in an "A" (Agricultural) District, located at 22469 Eden Canyon Road, north west side, approximately 0.65 miles north east of Hollis Canyon Road, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 085A-0100-003-00. (Continued from May 24, June 14 and July 12, 2006).

Staff announced that a continuance request had been received by the architect for the project. He will be out of the country due to an emergency. Public testimony was opened. There were no requests to speak. Public testimony was closed.

At the Chair's discretion the item was continued to September 27, 2006.

5. **ABDUL NOOR MAYER, CONDITIONAL USE PERMIT, C-8490** – Application to remodel an existing service station by replacing the pump island canopy and business signage; to renew a Conditional Use Permit ; and to allow the sale of alcohol, in a C-1 (Retail Business) District, at 18501 Hesperian Boulevard, west side corner south of Bockman Road, unincorporated San Lorenzo area of Alameda County, designated Assessor's Parcel Number: 412-0085-003-03. (To be continued without discussion to September 27, 2006).

Public testimony for Conditional Use Permit, C-8490 which was removed from the Consent Calendar was re-opened. Mr. Bill Burkhalter of Image Point introduced himself. Mr. Burkhalter represented the applicant, Mr. Abdul Noor Mayar regarding the remodeling of the service station. The applicant, Mr. Mayar will handle the portion of the application relating to the alcohol outlet. Bill Burkhalter asked staff if additional information was needed prior to the next hearing. Staff confirmed they had all of the

materials necessary. Public testimony was closed.

The Chair confirmed the continuance date as stated on the Consent Calendar. The application will be continued to September 27, 2006. Mr. Bill Burkhalter confirmed September 27, 2006 was acceptable.

APPROVAL OF MINUTES: Member Pexioto motioned to approve the Minutes of August 8, 2006 with submitted corrections. Member Friedman, seconded the motion. Members Clark and Spalding, abstained and did not participate in the vote. Motion carried 3/0/2.

Member Friedman motioned to approve the Minutes of August 23, 2006 with submitted corrections. Member Pexioto, seconded the motion. Member Spalding, abstained and did not participate in the vote. Motion carried 4/0/1.

STAFF COMMENTS & CORRESPONDENCE:

Per Board Member Spalding's request a list of proposed Conditions for C-8495 were submitted for review. The Board confirmed the list of conditions had been submitted and requested they be included in the next staff report.

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

BOARD'S ANNOUNCEMENTS, COMMENTS AND REPORTS:

Member Pexioto asked staff if the Sign Ordinance limited the total number of signs that can be placed on a building. Staff explained that the Sign Ordinance related to the restriction of size not to the specific number of signs allowed.

ADJOURNMENT:

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

CHRIS BAZAR - SECRETARY
WEST COUNTY BOARD OF ZONING ADJUSTMENTS