

**CASTRO VALLEY MUNICIPAL ADVISORY COUNCIL
MINUTES FOR August 23, 2004**

(Approved as corrected September 13, 2004)

- A. CALL TO ORDER:** The Chair called the meeting to order at 6:00 p.m. **Council members present:** Dean Nielsen, Vice Chair; Councilmembers Ken Carbone, Karla Goodbody, Jeff Moore, and Carol Sugimura. **Council members excused:** Andy Frank, Chair; Council member Ineda Adesanya. **Staff present:** Tona Henninger, Steve Buckley, Bob Swanson and Nilma Singh.

There were approximately eighteen people in the audience.

- B. APPROVAL OF MINUTES OF August 9, 2004 - Ms. Sugimura said she will submit her corrections to the secretary. Ms. Goodbody moved and Ms. Sugimura seconded that the Council approve the minutes of August 9, 2004, with modifications provided by Ms. Sugimura. The motion passed 5/0.**
- C. PUBLIC ANNOUNCEMENTS:** Mr. Nielsen announced that Regular Calendar item 6 will be discussed first, followed by item 5.

D. REGULAR CALENDAR:

- 1. MODIFICATION TO SITE DEVELOPMENT REVIEW, MS-1939 – PATEL -** Application to remodel an existing hotel to modify the architectural style, to replace existing signage, enclose existing stairs, and to make interior modifications, on a 33,541 square feet lot, located in the Castro Valley Central Business District Specific Plan Sub-area 3, at 2532 Castro Valley Boulevard, north side 231 feet east of Stanton Avenue, unincorporated Castro Valley area of Alameda County, bearing County Assessor's Parcel Number: 084A-0181-062-05.

Mr. Buckley summarized the staff report.

Public testimony was called for. Mr. Patel, the Applicant, said he was available for any questions. In reference to the parking spaces, he explained that the surface parking lot spaces are already compact and the garage spaces are standard dimensions. In response to the Council, he further explained that eliminating one parking space would not be detrimental and in reference to access, there was one-way vehicular entrance and exit through the site. Mr. Carbone asked if there was a plan to change the color scheme. Mr. Patel replied yes, adding that the blue color would be completely removed and further submitted color photographs.

Public testimony was closed. **Mr. Moore made the motion for an approval per planning considerations adding that the Applicant work with staff regarding the parking spaces. Mr. Carbone seconded the motion which carried 5/0.**

2. **MODIFICATION OF PLANNED DEVELOPMENT (1557th ZONING UNIT) AND CONDITIONAL USE PERMIT, C-8275 – ADAMS** – Application to modify PD [Planned Development, 1557th Zoning Unit), allowing C-N (Neighborhood Business) District uses and auto repair business subject to Type A service station requirements], to include additional buildings and services according to a 5-year phasing plan, on one site containing approximately 0.30 acres, in a PD (Planned Development, 1557th Zoning Unit) District, located at 18811 Lake Chabot Road, southeast corner of the intersection at Huber Drive, unincorporated Castro Valley area of Alameda County, bearing County Assessor's designation: 084B-0502-044-00.

Mr. Buckley summarized the staff report. A revised site plan and phasing plan is being proposed: first phase includes building permits and installation of one-hour fire wall; second phase includes removal of temporary trailer, new office foundation and repair; the third phase would occur in 2005 which would include construction of new office, re-striping, signage replacement and landscaping with the final phase in Fall 2005, with a final inspection. Mr. Carbone asked if the plan was really for three years since we've been discussing a five-year plan for about two years. Mr. Buckley replied yes, and the new plan is to complete the project even quicker than that. Mr. Moore asked if all parking requirements were met and requested clarification on vehicle storage during the repair phase. Mr. Buckley stated that parking spaces 1, 2 and 11 have circulation issues. Currently, there is unstriped parking, outdoor storage and staff parking, with one entrance and exit, but that staff had worked with the applicant to design a workable arrangement and that is reflected in the modified plans being presented tonight. Mr. Moore asked if there would be vehicle storage during the repair phase. Mr. Nielsen asked if cars would be parked on site at night and the location of the fire wall. Staff replied that there would be no outside parking at night and this could be one of the conditions of approval. The triangular portion of the building would be constructed along the property line, so it requires a fire wall. Mr. Carbone said his concern was the continued utilization of the corner piece. This was a temporary piece that should have been removed upon completion of the permanent building.

No public testimony was submitted. Ms. Goodbody noted that there was much improvement from the last meeting, especially the description of the proposed phases. Mr. Carbone reiterated his concern regarding the corner building. Although labeled as storage, it could be utilized for other uses. He would recommend denial of the proposal if this corner building was to remain. He felt that this building has been a problem since the beginning. He also wanted to address the color scheme as part of the conditions of approval. Mr. Buckley added that the Applicant has not submitted any color schemes. Mr. Moore noted that the existing triangular part of the building was not enclosed. Mr. Moore stated that the building should not be utilized for additional vehicle work. He asked staff if the matter would be agendized again after a color scheme, preferably a neutral color, and information on storage after hours have been submitted. Mr. Buckley replied that it could come before the Council again but indicated that these issues could be included in Conditions of Approval which would reflect that outdoor storage of vehicles would be allowed only during business hours and all storage after hours would be indoors, and the color scheme would be subject to approval by the Planning Director.

Mr. Carbone moved, seconded by Ms. Goodbody that the application be conditionally approved per staff considerations and the above modifications. Motion carried 5/0.

3. **TENTATIVE TRACT MAP, TR-7549 – BRIGGS** - Application to allow conversion of eight apartment units to condominiums, on one site containing approximately 15,000 square feet (0.34 acres), located at 22242 North Sixth Street, east side, approximately 150 feet north of Knox Street, unincorporated Castro Valley area of Alameda County, bearing County Assessor's designations: 0415-0100-126-01 and 0415-0100-126-02.

Mr. Moore recused himself. Mr. Buckley presented the staff report adding that there are numerous shortcomings as compared to the Condominium Conversion Guidelines, but a noise study and other details would be worked out as conditions of approval. Mr. Nielsen noted that the staff report does not indicate any serious non-conformity issues. Staff replied that basically it was a question of whether the site was suited to ownership versus rental housing, as no changes are proposed to the existing buildings. Ms. Goodbody noted that the property did not have a Hayward address but the matter was referred to City of Hayward and asked if the property was in the Hayward School District. Staff explained that annexation to City of Hayward was a possibility in the future and the property fell within the City's sphere of influence.

Public testimony was called for. Doug Rogers, Project Engineer, said that this was a simple project, a conversion from rental to ownership with only cosmetic changes. Ms. Sugimura asked for the price range. Mr. Rogers answered that since that it was still early in the process, the price has not been set but it would be at the lower end of the range.

Public testimony was closed. Mr. Nielsen noted that at one time, the project had met the requirements and there were no glaring issues. In response to Ms. Goodbody, Mr. Buckley confirmed that no structural changes were being proposed.

Ms. Goodbody moved, seconded by Ms. Sugimura, to approve the application as submitted. Motion carried 4/0.

4. **CONDITIONAL USE PERMIT, C-8313 – SUNG** - Application to allow continued operation of an extended day care facility for 60 children, grades K through 6, at an existing site (Proctor Elementary School) in an R-1-CSU-RV (Single Family Residence, Conditional Secondary Unit, Recreational Vehicle) District, located at 1752 Redwood Road, southeast corner of Redwood Road and Proctor Road, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Numbers: 084C-0940-006-05 and 084C-0945-004-03.

Mr. Buckley presented the staff report and in response to the Council, indicated that he was not aware of any complaints.

Public testimony was called for. Mimi Albert, Program Supervisor, spoke in support. Students from Proctor Elementary School will be accepted only and for the summer program, they will be considered first followed by others. In response to Ms. Goodbody, she further explained that Kids Care Plus was previously at this location, and the current operation is by Adventure Time.

Satish Chitmis, opposite property owner at 5010 Proctor Road, in opposition, said he would like to know the provisions of the traffic impact since traffic was his main concern. Neighbors have a lot of traffic problems in the mornings including double-parking and children crossing without the crossing guard since he (guard) was located on Redwood Road. During summer games, the situation was worse with additional cars and blocking of neighbors' driveway. Ms. Goodbody asked if these students were from the elementary school or the day care. Mr. Chitmis said he could not differentiate since both were located on one site. Mr. Carbone asked if he had called the Highway Patrol. Mr. Chitmis replied yes adding that he had also discussed the issue with the principal who had indicated that parents had been informed. But, Mr. Chitmis said, the problem has continued to exist. The school does not have a pick-up and drop-off area. Mr. Carbone noted that the school was the primary use and further suggested that Mr. Chitmis also call the school district.

D.C. Maharaj, opposite property owner at 5014 Proctor Road, concurred with the above speaker. He felt that the situation was extremely dangerous and requested that this expansion be looked at more closely in reference to the general population and safety of kids. Their concern was that the expansion would add to the parking problem and traffic congestion, which was also a concern for the safety of the kids. He had requested the school to designate a drop-off area on the property but to-date this has not occurred. And now another expansion was being proposed. Mr. Nielsen pointed out that this was not a new expansion but a request for continued operation. Bob Swanson, representing Supervisor Miley, said that they were also concerned with child safety. The school was originally built for walk-to school kids but agreed that the principal should work with the neighbors to determine a drop-off time. He suggested a meeting with the school, County Traffic Division, neighbors and his office.

Public testimony was closed. Mr. Carbone asked if it was possible for staff to contact the school board to look into the traffic situation. Mr. Nielson felt that if the matter was not resolved through Supervisor Miley's office, perhaps it could be discussed in a public forum with this Council. Mr. Swanson suggested a short letter to put more emphasis and Ms. Henninger suggested directing the matter to the Traffic Division. Mr. Moore felt that perhaps parents need to be reminded yearly since there were new parents every school year and suggested that a condition could be added to reflect this. He asked if there were special requirements for drop-offs. Staff answered that the school should have a designated area.

Mr. Carbone moved, seconded by Ms. Goodbody, that the application be conditionally approved as submitted by staff. Motion carried 5/0.

5. **CONDITIONAL USE PERMIT, C-8280 - NEW LIFE PRESBYTERIAN CHURCH** -- Application to allow construction of a church in an existing facility in an A (Agricultural) District, located at 9998 Crow Canyon Road, west side, one mile north of Norris Canyon Road, Castro Valley area of unincorporated Alameda County, designated County Assessor's Parcel Number: 0085-1902-001-00. (Continued from July 12, 2004).

This item was discussed after #6, C-8143. Ms. Urzua presented the staff report and noted that the church could be considered under a Conditional Use Permit but since it was located in a structure not permitted, she has made a recommendation for a denial.

Public testimony was called for. Terry Thompson, Deacon, said that he thought their situation was different from the Hosanna Homes project at the same site and not related to problems with zoning. He also pointed out that all four Conditional Use Permit findings could be made in the affirmative. He described the services adding that about 12-20 people meet once a week; there was minimum Sunday service traffic, hence there was not a significant impact. The members bring their own water. There were other similar, but larger, churches in the area, and as such the use was not incompatible with the surrounding uses. Mr. Carbone explained that the Council did not have a problem with the church use. Their concern was the un-permitted building.

Upon clarification from Mr. Nielsen, the other three speakers declined to offer their testimony.

Public testimony was closed. A discussion followed regarding compliance with the Williamson Act limitations on the property. Mr. Carbone felt that the Council could approve the use with a condition that a building permit be obtained. Mr. Buckley suggested that an approval could be made subject to modification to the Williamson Act as required and subject to all requirements of different County agencies.

Mr. Carbone made the motion to approve the application subject to modification to Williamson Act, full compliance to code occupancy and clearance from all agencies. Ms. Goodbody seconded and the motion carried 5/0.

- 6. CONDITIONAL USE PERMIT, C-8143 - HOSANNA HOMES-** Application to allow continued operation of a foster care licensing agency and requesting a ten-year renewal period in an A (Agricultural) District, located at 9998 Crow Canyon Road, west side, one mile north of Norris Canyon Road, Castro Valley area of unincorporated Alameda County, designated County Assessor's Parcel Number: 0085-1902-001-00 **(Continued from July 12, 2004).**

This item was discussed before item #5, C-8280. Ms. Urzua presented the staff report adding that on August 13, 2004, she spoke with Ron Torres of the Environmental Health Department, who stated that the septic system was sufficient. There were two separate systems with a third leach field in case one of the main ones failed. In response to Mr. Carbone, she said that the capacity of the septic system did not match with the number of people. Ms. Goodbody asked if the system was for all uses or only for the foster home. Staff thought it was for all uses. Mr. Moore suggested getting a response in writing.

Public testimony was called for. Verne Teyler, Applicant, verified that initially there were four separate septic systems but currently there were three. Mr. Moore requested plans identifying the leach fields. Mr. Buckley added that there were issues related to the Williamson Act. A

discussion followed regarding the Williamson Act, a commercial use in an agricultural area, pre-existing uses, direction for the Council, the septic system and inadequate water supply.

The Council requested guidance regarding their action. Mr. Swanson asked if the use currently did not conform with the Williamson Act contract, and if no changes occur to this contract, the Applicant would be wasting his money trying to bring the project into conformance with building code requirements. Mr. Buckley replied yes. Mr. Teyler indicated that a lot of money has already been spent and he was willing to meet all the requirements of all the agencies involved and was prepared to move forward. He complained that the public hearings continue to drag the same issues out again and again. His preference was to work privately with the County and then bring the issues to a public forum. Ms. Goodbody felt that the Fire Department's concerns should be addressed first. Mr. Teyler said he was not aware of new issues that were communicated to the Planning Department. Mr. Nielsen asked for a list of requirements for the next hearing. Mr. Buckley pointed out that the staff report includes such a list. A list of items was also circulated to the Council members by Ms. Urzua. Ms. Henninger added that nothing was considered urgent in the sense of being an immediate health or safety concern when the Planning Department held in inter-agency meeting with different agencies, but that each agency has a prioritized list of issues. Ms. Goodbody said she was concerned that page 3 of the staff report states that the building has not been approved by the Fire Department although the school was occupied with kids. Ms. Urzua explained that if it was a new building, the school would not be able to operate, but that if it was considered an existing building then the Fire Department would have some flexibility in its requirements. Mr. Teyler explained that initially the school had been looked at by the different agencies. Staff disagreed.

Calvin Ward said he was shocked to learn of the existence of the three to four leach fields since he has not found any permits on file with the exception of one for an increase in capacity issued in 1989 for the residence, and he was not aware of the capacity of the septic system. Lots of homes downstream have wells that draw water from the creek and, as such, he has contamination concerns. He thought that the issue was whether or not to allow this use. The only school on site was accessory to the group home in 1985 and in reference, he further submitted colored photographs of the existing buildings on the site. He discussed Mr. Teyler's assets and gross income and submitted copies of tax returns filed on behalf of Hosanna Homes. He reiterated that the issue was neither the capacity, nor good or bad work of the organization, but whether the use was allowed in the District. In 1989, Mr. Teyler had tried to expand to twenty-four kids but had been unable to due to safety issues. He urged a denial.

Public testimony was closed. A lengthy discussion followed regarding compliance with the Zoning Ordinance, General Plan, Measure D and Williamson Act and the definitions. Mr. Buckley explained that per the Zoning Ordinance, Administrative Offices were not allowed unless secondary to the primary use. In this case, administrative office is the main use, and also could not be related to a home occupation. Hence, it was not allowed in the Agricultural District. The problem is that Mr. Tyler has expanded and changed the use over time. Mr. Carbone informed Mr. Teyler that a positive recommendation could not be made but asked if he had a preference to move on or to continue the matter. Although Mr. Teyler opted for an action, he said he was

concerned that the use would have to be closed down. Mr. Nielsen pointed out that the Council only makes recommendation to the Board of Zoning Adjustments. Staff also noted that the church was located in the same un-permitted buildings, and that a denial of one use could affect the other. Ms. Henninger further explained that Zoning Enforcement usually does not take any action until a final decision is made by the approval bodies once a permit process has begun.

Mr. Moore made the motion to deny the application due to its incompatibility to the General Plan, Williamson Act, Agricultural use and in support of the comments and findings as contained in the staff report. Mr. Carbone seconded the motion, which carried 5/0.

- E. OPEN FORUM** – Mr. Jeffrey Zimmerman, 5837 Bolger, Castro Valley, said he was new in the area. In reference to the child care project, he thought that all parents had to sign off on the school's traffic rules as he had just done. He also discussed his frustration with his plans for opening a business along the boulevard. Mr. Carbone advised him to contact the Redevelopment Agency's Citizens Advisory Committee (CAC); their next meeting is on August 25th at 6:30 p.m.
- F. CHAIR'S REPORT** – None.
- G. COMMITTEE REPORTS** – None.
- H. STAFF ANNOUNCEMENTS, COMMENTS AND REPORTS** – Mr. Swanson announced that the proposed road improvements for Somerset Avenue have been delayed since the contractor is over-booked.
- I. COUNCIL ANNOUNCEMENTS, COMMENTS AND REPORTS** – None.
- J. ADJOURN** – The meeting was adjourned at 8:10 p.m.

NEXT HEARING DATE: MONDAY, SEPTEMBER 13, 2004