

**CASTRO VALLEY MUNICIPAL ADVISORY COUNCIL**

**Minutes for June 27, 2005**

(Approved as corrected July 11, 2005)

**A. CALL TO ORDER:** The Chair called the meeting to order at 6:35 p.m. Council members present: Ken Carbone, Karla Goodbody, Jeff Moore and Carol Sugimura. Council members excused: Andy Frank, Chair; Dean Nielsen, Vice Chair and Ineda Adesanya. Staff present: Steve Buckley, Deric Licko, Bob Swanson and Maria Elena Marquez. There were approximately 45 people in the audience.

**B. Approval of Minutes of June 13, 2005.**

**Mr. Moore motioned with a second by Ms. Sugimura that the Council approve the minutes of June 13, 2005 as corrected. 4/0**

**C. Public Announcements – None.**

**D. Regular Calendar.**

**1. CONDITIONAL USE PERMIT, C-8407, NEW CINGULAR WIRELESS** – Application to install and operate a wireless telecommunications facility in an M-1-B-40 (Light Industrial, 40,000 square foot MBSA) District, located at 2497 Grove Way, southeast side, 321 feet southwest of Morales Court, unincorporated Castro Valley, and designated Assessor's Parcel Numbers: 416-0080-001-02, 416-0080-002-02 and 416-008-003-02.

Mr. Buckley presented the staff report. The proposal was to construct 6 new antennas - 3 sectors, 2 antennas per sector. There were a few suggested design refinements that included adding a detail cap to the proposed screen wall to match the existing detail at the roof line of the building. There were two other conditions recommended, including a standard fee for Planning Department operations to cover for activities related to a telecom in general and a condition related to the General Services Agency's concern with radio interference systems that they operate. This use permit was recommended for 5 years operation. Mr. Carbone asked Mr. Buckley if there were some illustrations of previous applications of the existing structure with the antenna improvements. Mr. Buckley said yes and there is a graphic called the southwest elevation which shows the existing storage facility, last page of the staff report, which shows a proposed parapet wall that will be constructed on top of the corner element that already exists on the building. Mr. Carbone asked if that wall is facing the street. Mr. Buckley said yes. The total height is 44 feet above the adjacent portion.

Nicole Crowley, representing Cingular Wireless, stated that she is here to answer questions that the Council might have. She presented two photographs of the existing and the proposed facility. Ms. Sugimura asked Ms. Crowley if this was the only change to the facility. Ms. Crowley said yes. Mr. Moore asked if the parapet wall is on all four sides. Ms. Crowley said yes.

Public testimony was called for. No public testimony was submitted.

**Mr. Moore motioned to approve Conditional Use Permit 8407 with staff considerations. Ms. Goodbody seconded. Motion passed 4/0.**

2. **VARIANCE, V-11919 and SITE DEVELOPMENT REVIEW, DS-1982, KENT LINN/ROBERT D. BROWN** – Petition to construct two units on one site containing one existing unit, for a total of three units, and to result in expansion of a non-conforming use by maintaining an existing 3 ft. non-conforming side yard where 10 ft. are currently required, on property in the R-S-D-3 (Suburban Residence, 2,500 sq. ft. minimum building site area per dwelling unit) Zoning District, measuring approximately 13,939 sq. ft. (0.32 acres), located at 20258 Anita Avenue, west side, 835 feet north of Castro Valley Boulevard, unincorporated Castro Valley area of Alameda County, designated County Assessor's Parcel Number: 084A-0124-007-02.

Applicant was not present. Mr. Carbone put this item at the end of the agenda.

3. **SITE DEVELOPMENT REVIEW, S-1985 – HUGHES** - Application to remodel and addition of an existing restaurant and reconfigure parking and landscape areas in a CVCBD, Sub 10 (Castro Valley Central Business District Specific Plan, Sub Area 10) District, located at 3714 Castro Valley Boulevard, northeast corner of the intersection of Yeandle Avenue and Castro Valley Boulevard, unincorporated Castro Valley area of Alameda County, designated Assessor's parcel Number: 84C-0724-063-00. **Continued to July 11, 2005.**
4. **VARIANCE, V-11917, JEFF & JULIE De LIMA** – Application for building site status on a parcel without approved frontage in order to construct: 1) a single-family dwelling 28 feet 6 inches in height where 27 feet is the maximum allowed, and with a 10-foot side yard where a 20 foot yard is require; and, 2) a detached garage and secondary dwelling unit 2 stories and 20 feet in height where one story and 15 feet in height are the maximum allowed in an R-1-B-40-CSU-RV (Single Family Residence, 40,000 square foot MBSA, Secondary Unit Recreational Vehicle) District, located at 17760 Madison Avenue, east side, approximately 1,200 feet north of Seaview Avenue, unincorporated Castro Valley area of Alameda County, and designated Assessor's Parcel Number: 084C-0910-005-07.

Mr. Buckley presented the staff report. This item was heard by the West Board of Zoning Adjustments. This proposal has received some adverse comments just related to the need for the variances and the suggestion that in fact the site is steep and therefore the 30% slope should not be built on and that the site could be developed as a conforming project. However, there are arguments that given the steepness of the slope, height limits are difficult to meet in some cases, so that might be another consideration. The property includes both the primary dwelling and the secondary dwelling. The secondary dwelling will be built over a garage that is proposed. The project has been revised to limit the size of that secondary dwelling to the maximum 640 square feet. There is a conclusion that the property is not historic based on a professional consultant's report. With that, staff at this point is recommending approval subject to further testimony.

Julie De Lima, resident at 17760 Madison Avenue, spoke about the proposed plan on Madison Avenue and Common Road. The plan specifically discusses their property and describes it as part of the significant buildable area. There are many special circumstances to consider within this unique shaped lot. The property has many unusable areas due to road easements and setbacks. Due to the slope on the property and related concerns regarding runoff and impact to the creek, stacking will limit grading and maintain natural runoff, making it beneficial to the condition of the land. The lot has limited level ground, therefore building the house on fairly level ground would be the best possible option. Along the southern fence line is another relatively low level area making it the best possible placement for the driveway that leads to the detached garage and in-law unit. They are also planning to extend the asphalt of the driveway 22 feet to the back street of Madison Avenue which will allow for an emergency exit. The

property is the only one that has a thoroughfare to each road way on level ground without any obstruction. Having this will be a bonus for the community in the event of an emergency. The intent is not to exit their property from the Madison Avenue entrance. The applicant is requesting a variance to place the in-law unit on top of the detached garage to utilize the space that they have. This will also limit the grading that will need to be done making it beneficial to the condition of the land. Having the unit stacked will also give off street parking which the specific plan requires, due to the inability to park on the one lane roads. The applicant stated that they are aware and will address issues of concern of Mr. and Mrs. Thompson regarding their privacy. While putting the plans together, they thought about views, natural sun lighting and privacy for all. Since the in-law unit will be 86 feet from the Thompspon's house, the existing bamboo along the Thompsons's fence line is 16 feet which will only get taller and thicker over time. Many of the homes on Madison Avenue have in-law units and some are two story, which imply variances have been granted in the past. The applicant feels their request is reasonable. The other variance is for a reduced yard set back of 10 feet to the north side of the property. The distance between the two homes would be 44 feet insuring privacy on that side as well. They are also aware that variances have been allowed for set backs as well and feel this request is reasonable. The third variance they are requesting is a height variance of 1.6 inches for the main house. There have been variances granted for height in the community and if their property was 1 foot wider, they would have not even asked for this variance. They bought this property because they love the country open feel and want to preserve it and enjoy it along with the rest of their neighbors. It has been brought to their attention that the Thompsons are emotional about their plans and have written several letters to the County and made copies available to their neighbors. The applicant is disappointed that their neighbor did not approach them directly with their concerns. They have made assumptions and have wrong data. For example, there is no proposed bathroom in the detached garage, so any ideas that this space would be converted to living quarters is incorrect. There was a neighborhood meeting to discuss their building plans. The day of the meeting they were contacted by the person running the meeting and were uninvited due to the emotional state of the Thompsons. They feel that their proposed plan will only bring up the values of the homes and will be pleasing to the eye. They have made alterations several times to meet the County regulations. They will be in compliance with the other agencies including Alameda County Water Course Protection Ordinance, the Fire Department for the safety of the surrounding area, Alameda County Building Department for proper construction, Grading Department for correct runoff and grading, Land Development for proper development. She thanked the neighbors that are in support of their plans.

Public testimony was called for.

Winnie Thompson, resident at 17764 Madison Avenue, presented a letter to the Council which was read by Ms. Thompson and has been entered into the record. Dori Pendergrass, resident at 1198 Canyon Side Avenue, Ricardo Lara, resident at 22401 Charlene Way, and Salvino Garcia, resident at 17764 Madison Avenue, waived their 3 minutes right to speak to Ms. Thompson. The three of them are opposed to the variances.

Dobie Gelles, resident at 18489 Madison Avenue, stated that he has lived at that address for 30 years. He is inclined to be a fair man and he supports his neighbors. The De Limas seem to be reasonable people, he believes that he would be against any road access from both sides, other than to have a fire road not paved accessible for the Fire Department. He is not against development. The rules in the valley have changed several times. He has known many people in the audience for 40 years. He hopes that the Council is fair to the De Limas and fair to the residents of the road and that the Council abide by the rules that are in place. He does not

support a road going through, although when he walks the area, he has seen a road going through on the Thompson property. Let's be fair to both sides.

Maria Powell, resident at 17763 Madison Avenue, welcomed the De Limas to the neighborhood. She stated that they moved in a year ago, part of their property is also unbuildable. The beauty of it is that when they bought the property they just believed that was what they were going to do. They are not going to develop over 30% slope and keep the valley with the nature and ecology that is there. It is beautiful and a wonderful piece of land. She does not agree to have a second unit or even if the house is built over 30%. In a few years it is going to be done, and it happens that her house is over 30% and she does not intend to build anything there. She asked the Council to consider that.

John Aufdermauer, resident at 17580 Madison Avenue, has the last house on that road. He is in support of his neighbors. He looked at their plans, he talked with the planner at the Planning Department. He referred to comments by Ms. Thompson regarding the 30 degree slope, steep 5 feet and then it flattens out. He supports anything like that, he supports the secondary unit. Regarding fire safety, he said that Ms. Thompson mentioned that she has a through drive way in her house. She did not mention any of the neighbors that he knows, that anybody can use that for fire access, whether it was done with permit or approval. Talking about Kelly Canyon creek, which is the creek that goes in front of his house, yes, there has been a 100 year flood test done on that road. He does not have any information, but his house was built flat test on it. He supports the De Limas. The plans look good, their project will help the neighborhood, will help his property value and will help everybody else's property values.

Lyle Bogue, resident at 17800 Madison Avenue, asked if the De Limas have asked for a lot split. Mr. Buckley said no. Mr. Bogue asked why is it part of the staff report. Mr. Buckley responded by saying that the staff report lays out the zoning history which makes clear that the prior variance for lot split has expired and the zoning has changed and there is no lot split. Mr. Bogue said that the copy of the staff report that he has stated that the De Limas have asked for a reinstatement of the 1968 variance.

Mr. Buckley said that there is confusion at the bottom of page 2 regarding the prior variance. The prior variance was to divide the property and approve the building site for both of those. This variance includes only the building site status because it is already a building site, and in fact it is already a home owned plus the secondary unit which is allowed. There is no lot split, that was under the prior variance. Mr. Bogue read that portion of the staff report regarding this variance.

Mr. Buckley said that it relates to the building site status which is in the project description. Mr. Bogue said that he is extremely opposed to any lot split in this area. He sent a letter dated June 26, 2005 addressed to the Board of Zoning Adjustments where he expresses his concerns and reasons for his opposition. The letter was entered into the record.

James Milward, resident at 18177 Judy Street, stated that he knows Winnie Thompson by association with various groups. She showed him her property and what she has done to it and also what has been proposed. There is a creek on both sides, it shows roads but there are two small creeks. It is very high, that underground water has to be traveling that way millions of years. His concern is now that he saw the plans, blockages along from the slope coming down onto his piece of property, there will be problems with water. He wants to know if there has ever been a soils report for this property. What are they going to do with this underground water. He talked about a soils report that is 100 feet deep.

Bill Andrews, resident at 18028 Almond Road, stated that recently there was approval to build three very ugly houses two doors from his property. They are monolithic structures on a street that has only single family houses. It impacts his privacy and peace of mind. Not only is his house impacted but Lear Court is even worst. The houses there have lost their privacy in the back yards. The contractor went to the meeting and told neighbors not to worry about privacy and that he would take care of it. He has not done anything. He is opposed to the project.

Dave Deets, resident at 18413 Madison Avenue, is opposed to the secondary unit being a two story structure, that is his big opposition. The small opposition is the 10 foot side access on the property line. The garage structure could be a single story and there is enough room there on the main structure. He is opposed.

S. Hersch, resident at 18217 Judy Street, left her comments on the speaker card. She is opposed.

Linda Bennett stated that she is a member of Friends of the San Lorenzo Creek, which also incorporates water shed issues. They support appropriate creek sensitive development, avoid any variances and extreme lot coverage. This property is located with two creeks on either side and therefore it is a sensitive matter. She was on the Planning Commission for the City of Hayward for eight years; she was involved in planning issues with the City of Hayward and some in Castro Valley. Land is a sensitive issue, it always has been and it becomes a passionate issue. She asked the council consider a limit lot coverage which is supportive to the surrounding development, limit paving, be aware of history of flooding and drainage areas that will not negatively affect neighbors; set backs and side yards are set for safety and need to be respected. Development should be appropriate without the need of any variances. Grading is significant and needs to be monitored closely if approved. Sometimes between approving something and the time it is built the grading changes, and unfortunately it is something that when you look at it you wonder why. The road, as it is currently, will not be approved in this DNH and is in danger creating a dam effect. There are eucalyptus blocking drainage. The County does not have the funds to clean up creeks as they have in the past, creating an undue hardship on adjacent owners. She questioned how one can have a granny unit without a bathroom. This area is subject to flooding, while she believes that people have a right to build on their property but they also need to be sensitive to the surrounding area.

Roxann Lewis, resident at 17750 Madison Avenue, stated that she is opposed to the variances that the De Limas are asking. The De Limas are proposing to raise the existing structure, add an extra four car garage and secondary unit. The only structure on plain ground is the main house, the pool. Secondary unit requires extensive grading or initially identified as areas of 30% slope or greater. Secondary units are considered a privilege not a need and it appears that the De Limas are building a rental unit since they want access from Madison Avenue west. Regarding parking, the staff report mentioned the size of the garage for guest parking. She is surprised that they will be providing covered parking for guests. She thinks that what they are trying to do is putting too much on the site. The residents of Madison Avenue would like to re-visit the Madison Avenue Specific Plan. They started to re-do it again in 1995. The planner that was working on it apparently died and it was never finished. It is very important in light of variances such as this to finish that specific plan especially with the Castro Valley General Plan being done at this time. It seems like every time they ask the County for help with a road or a creek as the previous speaker stated, there is no money. So what happens is the actual residents end up cleaning up the creek themselves to avoid flooding or even help the neighbors when a neighbor's house floods. Funding is a real issue. She would also like to say that any building or

variance that takes place on either Madison Avenue or Common Road go before the MAC before it goes to the BZA.

Mr. Carbone asked Mr. Buckley if he was aware of the Madison plan. Mr. Buckley said yes. He handed out copies of the plan.

Dave Sadoff, resident at 18309 Pepper Street, asked staff if the structures to be demolished are greater than 50 years old. Mr. Buckley said yes, but they have been evaluated by a historian as not being of historical significance. Mr. Sadoff said he assumed that it will go before the PRHC. Mr. Buckley said that the staff person that works for the PRHC determined that a sensitive historical report was already completed. Mr. Sadoff stated that the Council should evaluate the report. This proposed project will adversely affect the creeks that are adjacent to the development. As such, these creeks are waters of the State of California, subject to the Water Quality Control Board. Therefore the Regional Water Quality Control Board should be asked to have their staff hydrologist evaluate the adverse impacts. He requested that the MAC stipulate that the Regional Water Quality Control Board have an active participation in this process. He is very concerned about cumulative effect, although the staff has decided that this is categorically excluded from CEQA. The cumulative effect of this source projects are allowed to happen in other properties. Cumulative effect on the creek will cascade down to the Castro Valley creek and further. He asked that the variances be denied.

Ken West, resident at 18525 Madison Avenue, stated that he has lived in the area for 25 years. He is really concerned about the roadway going through and the emergency exit and also the gate. His issue is that his house is the first one on the road. He sees everybody that comes in and out of the road. The people that live at the end of the road have no idea how much traffic there is. By granting access to their road, if the De Limas sell their house, and someone says "let's open this gate" people are going to start using this road. What is going to prevent that from happening in the future. He asked if the County had done a traffic study. Mr. Buckley said no. He is against the variance.

Connie Deets, resident at 18413 Madison Avenue, welcomed the De Limas to the neighborhood. She is very much opposed to a 30% grade. They have a 30% grade and they will not build on it. She referred to a fence and hopes it will stay. Regarding water, her house has been flooded and their property is adjacent to an older facility. They were flooded severely by trees getting stuck in the little bridge. Water is an issue. In regards to the in-law unit, there are a lot of in-law units on the adjacent properties all within 640 foot. They should not be bigger than that. When they purchased their lot, it was the size it is and they knew that. People should look at building and what is available without putting any variances on properties. She is opposed to all the variances. Also, this has nothing to do with the Thompson family, she met them a few days ago. If they are going to use both roads, then they need to be in the agreement for both roads because the roads are in bad shape. Opposed to variances.

Diana Hanna, resident at 10142 Cull Canyon Road, submitted a letter to the Council which was entered into the record. She visited the property a few days ago and was really upset with the fact that there are just narrow roads and the creeks is right there and Madison Avenue is falling off into the creek. Let us continue not to make the same mistakes.

Matt Turner, resident at 2756 Grove Way and representing Terry Preston and the Bay Creek Coalition, stated that he is very concerned that Kelly Creek and Coyote Creek have suffered a lot of abuse over the years. These are very sensitive environments. Variances like these affect

the whole creek system. All will suffer as a result. He referred to a letter dated June 23, 2005 submitted by Ms. Preston, which has been entered into the record.

Christine Belfiore, resident at 18162 Madison Avenue, stated that they moved to their property four and half years ago and they are in the process of remodeling. Last year their neighbor built a double tennis court on the back part of his property without any consideration of the drainage and both his property and theirs and the Deets property have a 30% grade behind them. They have probably one foot of flooding just from the tennis courts. She is opposed to this project because of the potential for more flooding.

Another concerned neighbor stated that there are two roads, Madison Common and Madison Avenue. Madison Common will be their address and will be their neighbor on the higher on the northern side, so the 10 foot set back will affect him more than anybody in this room. Because his house is 30 feet away from the property line, he does not have a problem with the set back. This proposed home looks better at this height. He is in support of the De Limas and as a builder he knows when you get your plan approved, site drainage is all part of that plan that is taken into consideration.

Jeff De Lima stated that the first thing that he wanted to make clear is that he heard for the first time that there has been some accusations that they have applied for a lot split. That is totally incorrect. There has been no application for a lot split. The lot was split in 1957. Also, the 30% grade, there is still some neighbors in the area that are stuck on this being 30% grade. It has been determined not to be a 30% grade. He is also opposed to a 30% building back there. They will not be using the back street. As far as the 1250 square feet in-law unit, that has now been reduced to 640 square feet, there is a bathroom in the in-law unit, not in the detached garage. There has been speculation about a bathroom in the garage. There has never been a proposal for a bathroom in the garage. The soils report has been completed and everything has been engineered to comply with the soils and all the other concerns.

Mr. Carbone asked Mr. De Lima about the set back issue if it is that because of the building constraints of the slope that are creating that to be there.

Mr. De Lima said that they were asked by the County to comply with the 30 foot set back. Now it has been moved and that is also in the new plan. Mr. Carbone said that basically the elimination of that variance is not even required.

Mr. Buckley said that the applicant has presented the modifications to the plan. There may be some confusion about how the plan has evolved, in fact 30% back from Madison which is conforming and greater than the original proposal. The unit is smaller as presented in the staff report, and it does have a low roof on the remainder. The variance is for the side yard set back on the dwelling which is 10 feet as shown in the site plan and for the height of the main dwelling. In fact the height could be up to 30 feet under the R-1 zoning, except that the median lot width given the shape of the property, the median in the middle at the narrowest point. In fact, if you take some sort of average, the height could be up to 30 feet, but because of the way we measured it, is limited.

Discussion ensued among council members and staff regarding the height variance and the side yard of the main dwelling and the height on the secondary dwelling unit.

Ms. Goodbody asked if they are seeking a variance for the road. Mr. Buckley said no. Mr. Carbone said there should be no access, no reason for that. Mr. Buckley said that it seems that

the Fire Department is in support of dual access, because it does give options for everyone including them, if needed, but is not required. Fire sprinklers are required as mitigation for fire hazard.

Ms. Sugimura asked if the emergency access will be closed. Mr. Buckley said that it could be. Discussion continued regarding the gate and who manages and monitors it and who would have access to it, emergency access, driveway and public access road with a gate.

Mr. Moore asked Mr. De Lima about the neighborhood meeting and who set it up. Mr. De Lima said that it was set up by John Lewis, held at his home. They were very anxious to go to the meeting to answer questions but they were not invited because Mr. and Mrs. Thompson were very emotional. They want to give the facts to people. Mr. Moore said that there is a lot of misinformation on this project.

Mr. Carbone said that it is a very sensitive area, because of the impacts to the surrounding area. There have been a lot of valid points other than the emotional regarding the property.

Ms. Goodbody asked Mr. De Lima if he tried to contact the neighbors, when and how many he talked to. Mr. De Lima said the day of the meeting that was held in their neighborhood and he talked to about 6 of them regarding their plans. They also dropped letters to all the neighbors to let them know they were interested in sharing their plans with them.

Public testimony was closed.

Mr. Moore asked Mr. Buckley about the precedent in the neighborhood and said that Mr. De Lima brought pictures of non-conforming two story dwelling secondary units. He asked if there is 30% and are there variances granted for construction on 30% also in that area. Mr. Buckley said that variances need to be considered in a case by case basis, generally related to the specific conditions of the property that you are looking at. Precedent by either for future variances is really relevant, given the condition on this site, you need to consider special circumstances whether it will be granted special privileges. In terms of the 30% slope, map 6 of the specific plan, shows areas of 30% slope that were specifically identified in the plan and the subject property is located just south at the finger of 30% slope at the middle of the drawing. The property actually was mapped northwestern corner as over 30% slope and that is the area behind the secondary unit, so the secondary unit has been shifted over 30% foot set back from Madison and outside of the 30% slope area. The issue about the drainage swale being about 30%. It depends on how you measure the 30%, if you take each little block of land and consider it 30% average over some large area or under the foot print of the building. The neighbors may be correct that there are certain portions of the site that could be over 30%, but is not the area designated in the specific plan.

Mr. Moore asked Mr. De Lima in considering variances, he said that having multiple variances is a challenge, and can it be avoided by designing it 10 foot set back. The Council has granted 10 foot set back variances in the past. Mr. Carbone said that particular part is not even the secondary dwelling, to remove the impact, increases the amount of runoff. It is actually better to stay more contained. Council members continued discussing issues regarding runoff, drainage, roadway width, height variance, and number of car garages.

Mr. Buckley said that the De Limas are demolishing one building.

Mr. Moore said that looking at the design, that could be reduced to 8 feet. There are definitely ways to possibly minimize this. They can make it a flat roof and not have a variance. Truly this is an issue with neighbors, a flat roof over there would look terrible, versus talking to the neighbors and try to reach a compromise. Ms. Goodbody said if a special circumstance clause could be included in the recommendation.

Council members discussing variance for height, 3 car garage and another four car garage and because of the desire of Mr. De Lima to put a second unit on there, you can lose 2 of the parking garages, have them adjacent to his parking and reduce the height and eliminate one of the variances and still do not increase the amount of runoff that he already proposed. Now he has a variance with a house on a hill with a relatively routine. Mr. Moore told Mr. De Lima that he has an option to design around that. Mr. Carbone asked Mr. De Lima if he would be opposed to look at that suggestion possibly as an option. Mr. De Lima said no. Mr. Carbone said that we eliminate that variance.

Mr. Moore made a motion for approval of V-11917 with staff considerations and the following modifications: that the variance for the height of the secondary dwelling unit be denied and the applicant make a modification such as the variance is not required or they can do whatever they want where the variance is not required.

Mr. Buckley said that the variance is required for the two story dwelling unit because it is two stories because it is above the garage, so its height and two stories. Mr. Moore said also allowable for architectural consistency. Also, restriction be made that no type of an entrance or exit into Madison be allowed at all. Approved the height variance on the house and the 10 foot set back on the house.

Mr. De Lima asked if he has to reduce the size of the garage and put the secondary unit next to it. Mr. Moore told him to eliminate the need for a variance for the secondary dwelling unit. He has 7 car garages and he has the right to out that, but he is also asking for a variance, so he would suggest one story structure, another two car garage. Mr. De Lima said that the car garage is more important to him than the in-law unit.

**Mr. Moore made a motion for approval of Variance 11917 with staff considerations and the following modifications: 1) specifically approved the 10 foot side yard set back in the main house; 2) height variance approved on the main house; 3) condition be stated that no access be allowed on Madison and that no driveway be constructed onto Madison; 4) the applicant keeps the secondary structure a single story, footprint no larger than is currently shown and he has the option of to either making it a secondary dwelling unit and a two car garage or a four car garage with no secondary unit. Mr. Buckley said that there is currently a gate and a fence on Madison. Ms. Goodbody seconded. Motion passed 4/0.**

Mr. Carbone told Mr. De Lima that his application was approved with the conditions provided and that staff will have to give him and hopefully that will work out. When the final drawings are done he can share them with the neighbors and the considerations given to whatever is visible to those roadways try to keep everybody involved.

Mr. Buckley said that this is a recommendation for the Board of Zoning Adjustments, which is another step in the process.

5. **TENTATIVE PARCEL MAP, PM-8595 & VARIANCE, V-11933 – KUAN/YU/TAM –** Application to subdivide one site into three parcels, containing approximately 0.57 acre, and so

as to provide 3'-6" side yard where 10' are required and a 16'-6" wide driveway where 20' are required, in a R-1-CSU-RV (Single Family Residence, Conditional Secondary Unit with Recreational Vehicle) District, located at 19225 Lake Chabot Road, west side, 106 feet south west of Christensen Lane, unincorporated Castro Valley area of Alameda County, bearing Assessor's designation: 084D-0515-002-00.

Mr. Buckley presented the staff report. He stated that the history of the site, given that there was a barn on the site, the barn has since been demolished, but there was a report done just generally trying to document the history of the area and potential history of such a barn and the conclusion was that is not a historic resource, given what was able to be determined from photographs. There is also an issue raised in the staff report in regards to CEQA exemption probably about the historic issue, has not been resolved and also about the variances on new lots, very fine technical issue, but CEQA exemptions provide that you can be exempt for subdivision if you do not require variances, but in this case they require a variance and with the roadway width and set back still does not raise any environmental issues, but then we have the slope of the site and the issue there it can also be exempt for subdivision and except slopes. So for variances, this project has a fairly steep rear yard area whether that is the subject of the subdivision, so the question is typical grading ordinance is insufficient to address that.

Mr. Carbone said that this area of Lake Chabot Road there is a lot of fill steepage in that area, there was a problem if we have a subdivision.

Mr. Moore said that the soil issue is a technical issue that the applicant will have to deal with that.

Nelly Tam, representing the applicant, stated that he is trying to subdivide this lot into three lots. Mr. Carbone asked if it is that why the roadway is so narrow. Ms. Tam said that they live in the house.

Mr. Buckley said that the existing house is actually undergoing some renovation, so the intent is to save the house, therefore narrow the driveway.

Mr. Moore asked if the set back on the side of the house is 10 feet. Mr. Buckley said that it is more than 10 feet and it was possible to bring one driveway on the other side of the house, just to serve the front house. The wider driveway is required when you serve more than 4 parking spaces, and they would only have 4 parking spaces in the rear if the front house had its own parking area and they would not have as much of a variance problem. However, they will require two curb cuts for the new driveways serving the two houses.

Mr. Carbone said that the consideration is going to be whether the council will allow that.

Ms. Tam said that Mr. Kuan was thinking of having two driveways, one going to the back of the houses and one for the front.

Mr. Carbone said that the concern is the amount of traffic and speed of cars on the road. The less driveways into the road the better. Mr. Buckley said that Lake Chabot has left turn lanes, so there is no guest parking on the street either, so there are three guest parking spaces shown on the site plan.

Public testimony was called for. No public testimony submitted.

Ms. Tam asked if they can not have two driveways, if they can have one. She said that in the new plan there is only one driveway.

Public testimony was closed.

Mr. Moore said that he is concerned about the six feet set back from the driveway, he thinks it is a challenge especially when the Council is looking at the problems with the lot size consistency, lower grade issues, and restricting the CEQA issues.

The Applicant asked for the definition of a set back. Mr. Carbone gave his definition to the Applicant. Council members and staff ensued discussion on set back, driveway and density issues. Mr. Carbone said that because of the parking situation on Lake Chabot Road, there is not going to be enough off street parking.

Mr. Moore said the area of the lots is a little bit smaller than the average size. He said that he understands that a case can be made for the three lots but the applicant is also asking for variances on the set back, he is asking for a lot. Mr. Carbone explained to the applicants the size of lots is an issue. The variance is the problem. There will be too many cars on this one little street. If you have two lots, there is no problem.

Mr. Moore said that his position is you either get three lots and you remodel the house or rebuild it, or you have two lots and leave the house where it is. Mr. Carbone told the applicant you leave the house there and build one behind or take the house down, remodel, move it, and then put two. Mr. Moore said that he agrees to the 16 foot variance.

Mr. Carbone asked Mr. Buckley to explain. Mr. Buckley said that they are requesting a 16 foot driveway, so required 3 foot 6 inches side yard, they will need a 10 foot set back and 20 foot driveway. Mr. Buckley said the problem is the County's district zoning, they are supposed to have 10 feet between the driveway and the roadway. You would not be crossing the threshold on the slope where it is steep.

Mr. Carbone and Mr. Moore asked Mr. Buckley what was his recommendation. Mr. Buckley said that the applicants have been working towards three lots and they made a good effort in terms of having one driveway and three guest parking spaces. The lot serves decent size up to 8,000 square feet. The staff person working on this application would recommend two lots rather than three. Mr. Moore said he can not approve three. Mr. Carbone asked the applicant to come back with a new plan instead of having the council deny the application.

Mr. Buckley said that it has to go to the BZA for the variance anyway. The BZA would like a recommendation from MAC.

Mr. Moore told the applicant that the issue will go to another board, the BZA, will approve or deny this. This Council is just advisory, the Council can either approve, deny or continue it tonight. If the Council continue it, it will hold up going to the BZA. The only reason that is beneficial to continue it is if you can talk to everybody and say that you will make these changes to try to get a positive approval. The problem is the set back and you will probably be denied. The Council can give you the option. The Council can give the applicant a vote, go to the BZA, and the BZA can overturn the MAC.

Mr. Carbone told the applicant that the BZA more than likely will say no. Mr. Moore recommended the applicant to continue it and come back with another plan. The applicants

decided to continue it. Mr. Carbone said this item will be continued to the next MAC meeting, July 11, 2005.

Mr. Carbone said the applicant of V-11919 and S-1982 is not present, the item was continued to July 11, 2005.

**E. Open Forum** – None.

**F. Chair's Report** - Mr. Carbone announced that this will be his last meeting.

**G. Committee Reports** – None.

**H. Staff Announcements, Comments and Reports**

Mr. Swanson announced that the Farmers Market is up and running every Saturday, at the BART parking lot.

**I. Council Announcements, Comments and Reports** – None.

**J. Election of Officers for 2005-2006.**

Ms. Goodbody nominated Mr. Moore for Vice Chair. Mr. Carbone announced that Mr. Moore is the new Vice Chair. Mr. Moore nominated Mr. Nielsen for Chair for 2005-2006. Mr. Carbone seconded. All in favor. Motion approved for Mr. Nielsen as Chair.

Ms. Goodbody thanked Mr. Carbone for his many years of service with the MAC. Cheryl Miraglia will replace him.

**K. Adjourn** - Meeting adjourned at 8:50 p.m.

**Next hearing date: Monday, July 11, 2005**