

## CASTRO VALLEY MUNICIPAL ADVISORY COUNCIL

### Minutes for October 10, 2005

(Approved as corrected November 14, 2005)

**A. CALL TO ORDER:** The Chair called the meeting to order at 6:35 p.m. Council members present: Dean Nielsen, Chair; Jeff Moore, Vice Chair. Council members: Andy Frank, Ineda Adesanya, Carol Sugimura and Cheryl Miraglia. Council members excused: Karla Goodbody. Staff present: Jana Beatty, Tona Henninger, Bob Swanson and Maria Elena Marquez. There were approximately 25 people in the audience.

**B. Approval of Minutes of September 26, 2005. Minutes were not available.**

**C. PUBLIC ANNOUNCEMENTS.**

Mr. Nielsen announced that regulations will be discussed at the Board Of Supervisors next meeting on October 18, at 11:00 a.m.

**D.** Presentation and discussion with the Alameda County Fire Department pertaining to regulations, requirements and conditions for land development (Alameda County Fire Chief Bill McCammon, Deputy Fire Chief Sheldon Gilbert and Deputy Fire Marshall Bob Bohman).

Fire Chief Bill McCammon made a few opening comments related to fire code and implementation and how the Fire Department deals not only with new structures, but also buildings in existing communities that they serve.

Mr. Moore said that the routine question regarding subdivisions is the width of driveways. He said it would be useful to help clarify some of the parameters acceptable in some situations, because the sprinklers are mitigating factors.

Fire Marshal Bohman mentioned that it is important to get into the fire operation area safely. The hardest questions are what type of fire access do people need. What are their needs operationally, the location and size of the project, the topography, and a sense for what a project is. Ms. Sugimura asked Mr. Bohman if they physically go out to the location. Mr. Bohman said no.

Mr. Frank said that a lot of issues have been raised like protecting adjoining houses, code is one issue and access is another issue. Also, he mentioned sprinkler systems. Chief McCammon said the Fire Department is not allowed to be more stringent than the code. They are allowed within the code to do trade offs.

Ms. Adesanya asked if there are other areas in Castro Valley that we should be concerned about. Mr. Bohman said that most of Alameda County does not have native vegetation.

Ms. Sugimura said that in some areas like Crow Canyon there is not enough water pressure, when the Fire Department does their assessment what is the water availability in case of fire. Chief McCammon said the Fire Department use those water tanks much of the time.

Mr. Frank said that a lot of questions are raised, focused directly on what is important to the Fire Department, what is the arrangement in their experience based on that. Mr. Frank said that sometimes you can not get into the neighborhoods. Chief McCammon said that in the situations that Mr. Frank has described, that would be an exception, not a rule.

Ms. Adesanya asked if the posting included red curbs. Mr. Bohman said some.

Some persons in the audience had concerns regarding space for trucks getting in and out, road width, sprinklers, and what are the consequences for parking on a red curb. Mr. Bohman said that it is a violation.

Chief McCammon indicated that if there are specific questions or why a decision was made, to give them (Fire Department) an opportunity to clarify and explain.

Ms. Miraglia asked if council members can make a recommendation, or does staff go back to the Fire Department? Mr. Frank said that if the Board of Supervisors can decide to change street width for fire protection, can they take action on the existing recommended change in access? Chief McCammon said that they adopt state code, 30 feet standard, the Board of Supervisors will have to take an action to change the ordinance. It could be challenged.

**E. Consent Calendar**

1. **VARIANCE, V-11958 – DONNA WILLIAMS** – Application to allow construction of an attached addition with a front yard set back of 11 feet where 20 feet is the minimum in a R-1-CSU-R-V (Single Family Residence, Conditional Secondary Unit Recreational Vehicle) District, located at 18472 Vernon Court, Castro Valley area of unincorporated Alameda County, bearing Assessor's designation: 084D-1208-021-00. **(Continued from September 25, 2005).**

**F. Regular Calendar**

1. **VARIANCE, V-11946 – LEE SCOTT-** Application to allow expansion of a non-conforming use (reduced parking spaces) by construction of an attached addition and a detached accessory structure in an R-1-CSU-RV (Single Family Residence) District, located at 21522 Lake Chabot Road, east side, 25 feet south of Meg Court, unincorporated Castro Valley area of Alameda County, and designated Assessor's Parcel Number: 415-0060-083-00 **(Continued from September 12 and September 26, 2005).**

Ms. Beatty presented the staff report. She stated that the Applicant wishes to move forward with the application as proposed. Mr. Moore asked Ms. Henninger if Code Enforcement was involved in this at all. Ms. Henninger said yes.

Ms. Primas, the Applicant, said that the contractor was handling this originally but they now have taken over as homeowners. The contractor is not involved in the project anymore. They want to basically figure out a way to have some kind of workshop, they have no garage at this point, no storage. They have two bedrooms with a closet in each one and they want to figure a way to do the work.

Ms. Adesanya asked staff what was the actual intent and if the applicant just wanted to add a bathroom and get a variance for the bathroom.

Ms. Beatty said that because the property does not have off-street parking, a variance is required. The original building permit was to add a bathroom, but in order to avoid the variance they must provide parking on the property. The only way to provide parking is to remove a portion of the dwelling, driveway to the rear, which is what the original building permit was approved to do. They later decided that they did not want to remove that portion. Ms. Adesanya told the applicants that it sounded like their main objective is to build storage, not necessarily a bathroom. Mr. Primas said that there are five people living in the house and with only one bathroom it does not work for them. They need the storage space as well as a bathroom. Ms. Adesanya said that the variance was requested for garage and a bathroom. With no access and in order to have a bathroom, they need to have considered a variance.

Mr. Moore said that the need for a bathroom is an issue. Mr. Scott said that they hired a licensed contractor and apparently he did not know what he was doing. The variance is in the name of the contractor.

Ms. Primas said that they are not adding living space. Mr. Nielsen asked the applicants if they would be willing to remove a portion of the house. Ms. Primas said no.

Ms. Adesanya said that if they want to add just a small structure, 6 by 6 tool shed. Ms. Miraglia asked if the Council can approve a variance for the bathroom. Ms. Beatty said yes. Ms. Adesanya said that she supports the bath addition, and would be more favorable to a smaller accessory structure. The structure is much too large to justify the variance.

Public testimony was called for. No public testimony submitted.

**Ms. Adesanya made a motion to approve Variance, V-11946, of the extension single family dwelling with the condition that the proposed storage structure be removed, and two off street parking spaces provided in the front yard setback. Ms. Miraglia seconded. Motion passed 6/0.**

2. **VARIANCE, V-11956 – DAVE & CONNIE CLAYTON** – Application to allow 2 accessory structures to be located less than 6’ from the existing dwelling, in a PD ZU 1905 (Planned Development, 1905<sup>th</sup> Zoning Unit) District, located at 3759 Boulder Canyon Drive, west side 300 feet south of Ridge Place, Castro Valley area of unincorporated Alameda County, bearing County Assessor’s designation: 417-0163-009-00.

Ms. Beatty presented the staff report. She stated that staff is recommending denial.

Mr. Nielsen asked if property owners in this type of developments are required to sign CC&Rs and asked if this was the situation here. Ms. Beatty responded that staff has not investigated the status of the deed.

Mr. Clayton, the Applicant, stated that this dispute presented tonight is a neighborhood dispute and they have one neighbor in their housing development that dictates her personal beliefs on the community and wanted to present her personal views with the Council. However, this neighbor, as you can see on the map, lives on another street, a quarter of a mile from him; she uses the Home Owners Association as her enforcement tool, yet the management company will tell you that they can not get anybody to complain about the issue. This is nothing more than a personal dispute against him. Yet this particular neighbor does not go out and look at other residences in the neighborhood. She has personally attacked his family and has caused them distress. He did call the Alameda County Fire Department to see if the structures would be allowable. The Fire Marshall indicated that he saw no problems. Also, he heard what staff indicated to you: the staff recommendation, in reviewing staff comments, staff policy indicates that they concur that the structures do not violate or cause any difficulties with neighbors’ view of the area. Mr. Clayton said that he needs the structures because one is being used for disaster preparedness supplies for three families for 5 days; the other structure he must keep for storage. Mr. Clayton would appreciate the Council’s recommendation.

Mr. Moore asked Mr. Clayton if the neighbor adjacent to him objects to the project. Mr. Clayton said no. Mr. Nielsen asked Mr. Clayton that when he moved in if he reached an agreement with the rest of the Homeowners Association. Mr. Clayton said that he has not specifically addressed the Association. Mr. Clayton said he is a member of the Board of Directors of the Homeowners’ Association. There has not been any comment or information exchange; it is being held at an executive level.

Ms. Adesanya said that this is in violation of the zoning code. Mr. Clayton said that is correct.

Public testimony was called for.

Tony Capone and Doretta Carbone, residents at 22589 Canyon Ridge Place, representing Lakewood Homeowners Association, stated that to follow the CC&R's they have had over 5 sheds removed from their community. Mr. Clayton installed a shed, they did not receive any application so they denied it. He submitted his paperwork in June. He is currently being fined because he has not removed the shed. He is re-applying with the Association to try to get the two sheds. Most of their homes are on a hillside. They are very concerned with the fire danger of the shed. He has a tree to cover the shed, sheds made of certain things and can not be seen from the street. They have on their deed showing they are part of a CC&R. Mr. Clayton was aware of this when he bought the house. Mr. Capone said that if they (the Association) permits special access to one, they will have to permit access to all.

Mr. Moore asked Ms. Carbone if they have granted variances for sheds at all. Ms. Carbone said that in their guidelines after they find out that the shed needs to be 6 feet from the fence, have to follow the county code, accessory has to be 6 feet from the fence. People understand. They have not.

Mr. Moore said that from the practical stand point looking at the bigger picture, there is a need for storage looking at the site. If anybody came up and requested a variance with the proper procedure and proper materials, is there any other option, for the exterior modifications that in your opinion does not meet the guidelines.

Ms. Carbone said that in their guidelines it states that 3 car garage, you can use one space for storage, the point is if he has 3 car garage, he can use one space for storage, if you have two car garage, you can use one space for storage. New homes come with no storage, no basement. Ms Carbone said that a planner stated to her that the Homeowners Association approved Mr. Clayton's sheds. That was incorrect.

Mr. Moore asked if the shed was virtually invisible. Ms. Carbone said that it is a fire issue, sheds two to three feet from the side of the house. Is he going to be responsible for the fire? Mr. Nielsen asked if the shed was 3 feet from the property line.

Ms. Adesanya asked Ms. Carbone that if the Council recommends approval, would that bring the applicant into compliance with the CC&R's? Ms. Carbone said no.

Public testimony was closed.

Ms. Miraglia said that from the Association standpoint and from her experience you can not make exceptions with CC&R's, there is a way to change it. Until that happens, as far as the dispute, she can not agree with that because it is a violation

of the zoning ordinance. There are no special circumstances for the approval. Ms. Miraglia recommended denial. Mr. Nielsen said that 3 feet is very limited.

**Ms. Miraglia made a motion to deny Variance, V-11956. Motion denied. Motion passed. 6/0.**

3. **VARIANCE, V-11962 – NANCY DUMAN** – Application to remodel an existing dwelling where by a new bay window encroachment would result in an 11 foot front yard where 20' is required, in a R-1-CSU-RV (Single Family Residence, Conditional Secondary Unit, Recreational Vehicle) district, located at 1707 Grove Way, south side corner east of Gail Drive, Castro Valley area of unincorporated Alameda County, bearing County Assessor's designation: 415-0180-001-00.

Ms. Beatty presented the staff report. She stated that staff is recommending denial.

Nancy Duman, the applicant, stated that she has a privacy problem. There is a big bush in front of her window, but it doesn't cover enough of the window. She decided that was not going to work and decided that the best solution was to put a window for the two slide side windows to have ventilation without having a bush. She is asking for 4 feet.

Ms. Adesanya asked Ms. Duman why she needed a bay window? Ms. Duman responded to have ventilation. It faces the street from her bedroom.

Mr. Moore said that this item is similar to the first one because there is a pre existing non-conforming use, small addition in the back, technically non-conforming, because of the shape of the lot.

Ms. Adesanya said that with variances you have to make the findings, and that is why she asked what was the intention to do this. Mr. Moore said that this is similar to the first variance, it is the same argument, allowing non-conforming parking. Ms. Adesanya said that Ms. Duman can re-plant a bush, or re-do her shutters, and thinks that a bay window is not a big deal.

Mr. Nielsen said that if condition of approval is to change to 2 feet. Ms. Duman said that it would not work. Reason for 4 feet was that the window could be above. Mr. Nielsen asked Ms. Duman if she was not willing to do 2 feet. Ms. Duman said that she needed to ask the contractor.

Public testimony was called for. No public testimony submitted.

Ms. Miraglia said that a variance down the street was granted and asked what it was for? Ms. Beatty said that it was a front setback variance for construction of a covered porch.

**Mr. Moore made motion of approval of Variance, V-11962. Mr. Frank seconded. Ms. Adesanya abstained. Motion passed 5/0.**

4. **VARIANCE, V-11966 – ROBERT DEKAS** – Application to retain an attached deck, providing a zero foot side yard where six feet are required, in an R-1-CSU-RV (Single Family Residence, Conditional Secondary Unit, Recreational Vehicle) District, located at 4990 Seaview Avenue, north side 88 feet west of Rockhurst Road, unincorporated area of Alameda County, designated Assessor's Parcel Number 84B-321-67. **(Continued to October 24, 2005).**
  
5. **VARIANCE, V-11952 & PARCEL MAP, PM-8738 – TAM, TAM, YU & KUAN** – Application to allow a 18' wide driveway where 20' is the minimum and a 6' side yard setback where 10' is the minimum with subdivision of the site into 3 lots, in a R-1-CSU-RV (Single Family Residence, Conditional Secondary Unit, Recreational Vehicle) District, located at 18332 Carlton Avenue, east side 200 feet north of Dominic Drive, Castro Valley area of unincorporated Alameda County, bearing Assessor's designation: 084B-0472-039-00. **(Continued from September 26, 2005).**

Ms. Beatty presented the staff report. She stated that staff is recommending approval of the variance.

Yev Philipovitch, the project civil engineer, stated that the Fire Department recommendations were acceptable.

Public testimony was called for.

Connie Copenhaver, resident at 18372 Carlton Avenue, stated that she lives next door to this property and that she moved one year ago. She is concerned about drainage, traffic, pollution and privacy. Also concerned about the lack of sprinklers. That drainage already does not support the rain that they have. In addition to that access, with that driveway probably the view is obstructed and that concerns her too.

Mr. Moore asked about the standard requirements for storm drainage. Ms. Beatty said that the Public Works Agency would look at that as part of a grading permit. This project would be subject to a grading permit. Mr. Moore said that it is very common if this goes through that significant requirements for grading and drainage would not impact the adjacent neighbors.

Ms. Copenhaver asked if this Council approves this project if the drainage will be taken care of. Mr. Nielsen said that they would have to drain it properly as condition of approval.

Jason Daniels, resident at 18355 Carlton Avenue, stated that he has lived for three years at this address. He said that his opposition is that the Carlton property sits at the end of two hills. They have been flooded out 2 or 3 times. He said that there is going to be an undue impact to the privacy of the neighbors. Several neighbors are not happy. He is also concerned about the high number of vehicles that will create a pedestrian hazard because there are no sidewalks. It is unclear who is held accountable for the proposed drainage of the project. He asked if the Homeowners Association will take care of the sewer. Besides, having that many houses packed in is too high density. He moved away from high density houses and does not want to deal with that situation again.

Mark Ledwick, resident at 18312 Carlton Avenue, stated that his property is on the opposite side of the driveway. He is concerned about parking in that area. Congestion on the boulevard has increased. Cars go very fast. There is very little parking available. It is just going to add to the problem. Also concerned about lot sizes, parking has not been taken into consideration. His driveway faces those two lots. This is a gross infringement on his privacy. People come to Castro Valley, divide property, built and ask for variances and the rest of the neighbors have to live there. This should be denied. He is drastically opposed to the project.

James Panico, resident at Sunshine Place, stated that street that has 25 foot neck, access into the street, has a turn around. This project is asking for special variance, 2 of them. He said he is not against the development on that property but said that there are better ways to develop that property. The property does need a turn around. Reduce lot sizes significantly. He suggested that utilities be dedicated to go underground. He hopes that the Council does not approve it. There are two parallel driveways, this project can not stand on its own. Part of the problem is that these two properties need to be addressed together. He encouraged the Council to deny this project. He thinks that they do not need a special variance. Everybody wants the neighborhood to look good.

Mr. Frank asked if the drainage problem has been mitigated. Mr. Panico said that the water comes running down on Alexis Court. No main storm drain. It is really important that this problem is taken care of before they put those homes there. More planning needs to be done. That property needs to be incorporated. It causes a lot of problems.

Richard H. Short, resident at 18351 Carlton Avenue, stated that he lives across the street from this property. He thinks it is destructive to put so many houses there. There is no significant room to build a proper street there. Also concerned about moving the hydrant.

Public testimony was closed.

Mr. Philipovich stated that they do not intent to dump water on anybody. This is not a problem that they created but they would cure the problem. Water goes into



the catch basin. It was mentioned about packing houses into the property, but the lots are above average size. The parking issues have been addressed. They do not intend to build anything illegal. When the plans are submitted, they will meet all the requirements for set backs. The power pole will be moved from the driveway. The intent is to build the project that will meet all the requirements.

Mr. Moore said that the neighborhood is concerned about drainage. Mr. Philipovitch said that the problem is to get water to catch basins. He said that they are working with the Flood Control Department to get this problem solved. Mr. Moore said that the landscape buffer reduces the width of the driveway and asked Mr. Philipovitch if he has considered that. Mr. Philipovitch said that the County seems not to be concerned about that. They want to be good neighbors.

Mr. Nielsen asked if the turnaround is not required. Mr. Philipovitch said no, if the houses are sprinklered.

Ms. Miraglia said that she believed that the intent of the applicant was to comply with everything that the County requires. She said that three lots are too much on this property, she supports two. She also suggested that a landscape buffer would be great.

Mr. Frank said that he supports two lots, but not three. Talking about reduction in access, fire sprinkler, and also drainage needs to be addressed. Builder talked in terms of the adjoining property if they are going to have three lots instead of two they need to provide access in and out.

Mr. Moore said that drainage is a technical aspect that can be solved. Lot size consistency meets lot size based on width of the driveway, it is more than acceptable, parking turn around. The Council certainly has approved many projects similar to this. Sees this project as pretty much conforming.

Mr. Frank said that minimum code arrangement, squeeze, you can have anything technically comply. The problem is that it does not make sense.

Ms. Sugimura said that she agrees with Mr. Frank and Ms. Miraglia. She supports two lots, but not three. It will diminish the impact on traffic, privacy and drainage issues. Three lots will be an impact to the neighborhood.

Ms. Adesanya said that there is no justification to approve parcel map.

Mr. Nielsen said that if the off street parking were extended and a portion of the front house be removed, there will not be a problem.

Mr. Frank made a motion to deny the project, but Mr. Philipovitch said that they would like to continue the item. Ms. Beatty said that the date is to be determined.

## **G. Open Forum**

Several persons in the audience requested to get the notice of the next hearing. Some neighbors said that they were not notified.

**H. Chair's Report – None.**

**I. Committee Reports – None.**

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

Bob Swanson said that the last day of the farmer's market will be Halloween. The vendors will be dressed in Halloween outfits. Judges are needed to judge vendors outfits. He needs two MAC members as volunteers. Ms. Miraglia volunteered and probably Mr. Moore.

Ms. Henninger referred to a copy of Brian Washington comments on the Brown Act. Regarding design review, she said that they are still working on that, for now it is a thought.

Mr. Moore asked about items on the consent calendar, what is the format for recusing on a technical issue.

Ms. Miraglia asked about the procedure for MAC representation. A discussion followed among council members and staff regarding the procedure followed by the different commissions (Planning Commission and the WBZA). Mr. Nielsen said that the Planning Commission does approve a project differently, same true to BZA. Ms. Henninger said the appeal period is 10 days. Ms. Beatty recommended having a MAC member present at these hearings.

Mr. Nielsen said that when a motion is made by the Council on a particular item, if the decision of the next board substantially wavers from that, to take action on it. Ms. Adesanya said that it should not be automatic. Mr. Nielsen said that some staff reports are very technical and pretty brief. He also noted that some members are getting the agendas and some others not. The Council always has the option of moving an item from the consent calendar to the regular calendar.

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

**L. Adjourn –**

Meeting was adjourned at 9:05 p.m.

**Next Hearing Date: Monday, October 24, 2005**