

**CASTRO VALLEY MUNICIPAL ADVISORY COUNCIL**

**Minutes for November 14, 2005**

(Approved as corrected December 12, 2005)

- A. CALL TO ORDER:** The Chair called the meeting to order at 6:39 p.m. Council members present: Dean Nielsen, Chair; Jeff Moore, Vice Chair. Council members: Ineda Adesanya, Carol Sugimura, Karla Goodbody and Cheryl Miraglia. Council members excused: Andy Frank. Staff present: Tona Henninger, Jana Beatty, Bob Swanson and Maria Elena Marquez. There were approximately 30 people in the audience.

**B. Approval of Minutes of October 10 and October 24, 2005.**

**Minutes for October 10, 2005 were approved as corrected. Ms. Miraglia made the motion, Mr. Moore seconded. Ms. Adesanya abstained. Motion passed 5/0.**

**Minutes for October 24, 2005 were approved as corrected. Ms. Miraglia made the motion, Mr. Moore seconded. Motion passed 6/0.**

**C. PUBLIC ANNOUNCEMENTS.**

Mr. Nielsen explained to the audience the purpose of the Consent Calendar.

**D. Consent Calendar**

- 1. VARIANCE, V-11958 – DONNA WILLIAMS –** Application to allow construction of an attached addition with a front yard setback of 11 feet where 20 feet is the minimum, in a R-1-CSU-RV (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 26, October 10 and October 24, 2005).**

Ms. Miraglia requested that this item be moved to the Regular Calendar.

- 2. CONDITIONAL USE PERMIT, C-8312, GRIMES & BALDWIN -** Application to allow the continued operation of a horse boarding facility for 63 horses, and the continued occupancy of 2 mobile homes for caretakers in an "A" (Agricultural) District, located at 8018 Crow Canyon Road, west side, 25 feet north of the intersection with Norris Canyon Road, unincorporated Castro Valley area of Alameda County, bearing Assessor's Parcel Number: 0085-1750-006-06. **(Continued from July 11, 2005, August 22, October 10 and October 24, 2005.)**

Ms. Beatty said that this item will be continued indefinitely.

**E. Regular Calendar**

- 1. VARIANCE, V-11958 – DONNA WILLIAMS** – Application to allow construction of an attached addition with a front yard setback of 11 feet where 20 feet is the minimum, in a R-1-CSU-RV (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 26, October 10 and October 24, 2005).**

Mr. Jeff Moore recused himself. His company is involved in this project.

Ms. Beatty presented the staff report. Ms. Miraglia said that she thinks there is not that much room between the house and the sidewalk.

Donna Williams, the applicant, stated that the addition would extend a building wall and be stepped back from the corner of the house by approximately 10 feet. The addition would be partly in the 20 foot front yard setback and it would be 11 feet from the right of way and 18 feet at the furthest point. She stated that they have talked to all of the neighbors and everyone is in agreement with the project.

Doug Rogers, with Greenwood & Moore, stated that they have measured the proposed addition to the next house. This new addition will roughly line up with the garage for the adjoining structure.

Public testimony was called for. No public testimony submitted.

**Ms. Goodbody made a motion to approve Variance, V-11958 with a second by Ms. Sugimura. Motion passed. 5/0. Ms. Adesanya arrived after the motion was made.**

- 2. VARIANCE, V-11965, - MIKE LUCIANI** - Application to allow construction of an attached two-story addition resulting in a 29-foot average building height where 25 feet is the maximum allowed, and continuation of an existing 3-foot 6-inch street side yard where a 10-foot yard is required in an R-1-CSU-RV (Single-Family Residence, Secondary Unit, Recreational Vehicle) District, located at 18540 Madison Avenue, east side corner, north of Seaview Avenue, unincorporated Castro Valley area of Alameda County, and designated Assessor's Parcel Number: 084C-0885-002-01.

Ms. Beatty presented the staff report. Staff recommends approval of the application. The applicant must comply with the development restrictions stated in the staff report.

Ms. Sugimura asked Mr. Luciani, the applicant, what he thought about the height reduction and he said that he is willing to comply. Mr. Nielsen asked Mr. Luciani how much more he thought he can cut out as far as the height. Mr. Luciani said that according to the report it could be reduced by another foot. It looks like it will be the same size as the house behind his. He said that if it is a matter of re-design the roof line and decreasing the slope ratio. He has to go back and re-draw a roof line to go from one foot less to two foot less. He said he prefers to decrease the slope of the roof and take the actual height of the roof to the living space.

Ms. Miraglia asked if the plans included aesthetic improvements to the retaining wall or any landscape for the fence. Mr. Luciani said they do not. Ms. Miraglia said she does not have a problem with 28 or 29 feet, but the condition of the property at the present time is a blight to the neighborhood. She would like to see a new fence, resurfacing or something on that retaining wall, some kind of landscape plan including the treatment of the boulevard strip. Right now it is full of weeds. She stated this variance would allow the applicant to do something that would not be allowed and that the property should be in keeping with the surrounding neighborhood. She would agree with the granting of the variance if the plans include improvements to the site. Mr. Luciani stated that it is hard to upkeep the property when you can't occupy the space. He has to create street appeal as well. He will be happy to put some stucco on the wall and clean up the fence. He would rather do that and decrease the roof.

Public testimony was called for.

Heather Hindmarsh, resident at 18560 Madison Avenue, stated that she hosted a blueprint party on Saturday night with 8 neighbors in attendance. She lives directly across from the property. This property has had 3 different owners in the last year. They are very excited that Mr. Luciani purchased the property and is planning on improving it. It seems that some of the council members are not familiar with the property because of the way they are describing it. It is on a very steep hill, the houses are staggered. The property that is behind his is an open field and that is also a steep hill.

Mr. Nielsen said he is concerned with the 29 feet height because of the property behind it.

**Ms. Miraglia made a motion to approve Variance, V-11965, subject to Conditions as stated in the staff report, page 5. In addition, the applicant will resurface the retaining wall, replace the fence, and include a front yard to put a treatment boulevard strip along Madison, and the plans and materials shall be approved by the Planning Department. All requirements from the Fire Department, the Public Works Agency and the Building Inspection Department shall be met. Mr. Moore seconded. Mr. Nielsen opposed. Motion passed 5/1.**

3. **CONDITIONAL USE PERMIT, C-8453 – CHRISANN NICHOLSON, KIDS CARE** – Application to allow the continued operation of a child care facility for 49 children, in a R-1-B-E-CSU-RV (Single Family Residence, 10,000 square feet, Minimum building Site Area, Conditional Secondary Unit, Recreational Vehicle) District, located at 19600 Cull Canyon Road, east side 600 feet north of Crow Canyon Road, Castro Valley area of unincorporated Alameda County, bearing County Assessor's designation: 085-1520-002-11.

Ms. Beatty presented the staff report. Staff recommends approval and also recommends location of an identification sign on the portable classroom which will include the name of the facility and the phone number.

Chrisann Nicholson, applicant, stated that they have a sign and a phone number listed on the portable that faces the street.

Public testimony was called for. No public testimony submitted.

**Mr. Moore made a motion for approval of Conditional use Permit, C-8453 with staff recommendations. Ms. Adesanya seconded. Motion passed. 6/0.**

4. **SITE DEVELOPMENT REVIEW, S-1947, FU/NAZARETH-** Application to allow the construction of a new single family dwelling in a parcel approximately 116,741 feet (2.68 acres) in a R-1-RV (Single Family Residence, Recreation Vehicle) District, located on Mikemary Court, northwest side, end of Mikemary Court, unincorporated San Leandro area of Alameda County, designated County Assessor's Parcel Number: 080A-0174-001-04.

Ms. Beatty presented the staff report. Based on the proposed dwelling height, staff recommends denial of the application. Many neighbors have expressed concern with the proposed single family dwelling.

Ms. Adesanya asked if the action was appealed. Ms. Beatty stated that the variance initially had been denied by the BZA and appealed to the Board of Supervisors and subsequently approved by the Board. The applicant had agreed to move the building further down the hill so as not to block the neighbors' view. Ms. Adesanya asked if the Board of Supervisors also supported or enforced the conditions of approval for the variance. Ms. Beatty stated that the Board approved subject to seven conditions.

Mr. Nielsen inquired county staff about the height issue. Ms. Beatty stated that the Site Development Review for this application will address the access, grading, drainage, setbacks and general appearance of the structure including minimizing the height of the structure consistent with building code and zoning requirements.

Teresa Nazareth, the applicant, referred to the graphics at the back of the staff report giving views and height of the street and the roofs. The architect has given a very clear angle that views will not be blocked. It is a vacant lot, 7.6 acres. The building is more or less in keeping with such a big lot. She bought the property from an applicant that had been before this council. She asked her architect to design a home in accordance with all the zoning ordinances. They took the trouble to move it where the height does not get in the way of anyone's view. The project is pretty much in compliance with all the requirements from the Planning and the Zoning Department. To address the neighbors concerns, the house was pushed back farther and lowered.

Public testimony was called for.

Mark Lowry, resident at 2437 Irma Way, made a Power Point presentation. A copy of the presentation was entered into the record. Mr. Nielsen asked if there were questions about the presentation.

Joseph Kohlman, resident at 16008 Cambrian Drive, made another Power Point presentation. A copy of the presentation was entered into the record. The property has had many different owners.

Warren Vinzant, resident at 2419 Irma Way, spoke on behalf of the Irma Way Group, which consists of a number of neighbors who have serious problems with the proposed development. The neighbors remain opposed to the present plan, and the main focus is the view preservation. In this case, it is important to emphasize that the Board of Supervisors granted conditional approval facing additional explicit restrictions upon the applicant's use of the property as a condition for granting the variance. One of the conditions is view preservation. The applicant committed to preserve neighbors' views multiple times. View protection was part of the applicant's testimony at four different Board of Zoning Adjustments meetings. View protection was part of the applicant's written agreements to get approval and those agreements were part of the Board of Supervisors conditional variance approval. The Irma Way group is asking the Planning Department to fully enforce the restrictions related to the height and location of the dwelling in view preservation, as set forth by the Board of Supervisors' Resolution R-2002-650. Mr. Vinzant read part of the Resolution document, which was entered into the record. The Irma Way group is asking the Planning Department to adopt a guideline that is included in the handout in which the group can determine whether the applicant's plan will provide them with a reasonable view. As noticed on page 8 of the handout, it illustrates what view will remain after the new criteria is met. The applicant's current plans preserve none of the view. They reduced the height of the house by one foot. The original elevation of the house at the second floor was 472 feet. Essentially, the applicant has done nothing to improve the situation. The applicant has 200 foot wide area to build the structure on. The group is asking her to move it a few feet and to come into compliance with what they agreed to and to what the Board of Supervisors thought they were going to do when they approved the variance. In talking with the Planning Department representative today, they went through the Planning Department letter sent to Ms. Nazareth on September 29, 2004, requesting quite a number of things be done by the applicant. He confirmed that the following requested items have not been completed: a new soils report by a licensed engineer, a drainage plan, landscape plans updated to reflect view preservations and there is no grading plan. Almost all of the requested items in the letter have not been met. The applicant continues to fail to meet the conditions set forth in this development. Instead, she repeatedly attempts to get approval with incomplete plans that violate the agreements. The group is asking not to allow this development to go forth this time. Instead, the group is asking that the MAC recommendation to the Planning Department explicitly direct the applicant to adhere to the conditions of the variance, meet the Planning Department's written requests and comply with the applicant's prior agreements. Furthermore, the plans are so incomplete at this time that this hearing fails to meet the requirements for a public hearing in this development since the public has had no opportunity to review completed development plans. Therefore, the group requests that another public hearing be held before any County approval is printed. The group expects the applicant to meet her view

preservation obligations as stated in the variance and requests a full public hearing after the developer's full plans are available.

Mr. Moore asked Mr. Vinzant how much is he requesting that she lowers the house. Mr. Vinzant said that approximately ten feet would be necessary. The actual elevations provided by the architect were estimates. The measurements should be taken from various areas on the property instead of the lower portion. There should be a criteria established to take measurements from specific locations and elevation and determine whether that view would be preserved. Mr. Moore asked Ms. Beatty if it was 22 feet and one story or just 22 feet regardless if it is one or two stories. Ms. Beatty said she does not have her materials with her. Mr. Moore asked Mr. Vinzant if he has met with the applicant. He said no. When they had the site development review in September 14, 2004, he gave the applicant his name and phone number as the contact person to discuss this issue. He received no phone calls and there has been no effort on the part of the applicant to deal with him. Nothing has happened.

Mr. Nielsen asked the people in the audience if the current property owner has met with them. They responded no.

Brian Buizen, resident at 15982 Cambrian Drive, stated that he has no problem with the idea of the structure being built there. He understands that there has been a variance granted. The problem is that absolutely none of the stipulations in the variance or in any discussion they have had, have been met. Where he lives is just below where this house will be built, there will be considerable danger if they do not deal with grading and water issues properly. He does not want to deal with mud coming in through the back of his house. At this point, he feels that the County has put no effort to protect the neighbors. He feels that the applicant has not done nothing to address these concerns.

Irene Athearn, resident at 2413 Irma Way, spoke on behalf of the neighbors, 30 families involved in Irma Way. She read a summary of concerns and the copy was entered into the record.

Pat Fortine, resident at 15983 Cambrian Drive, stated that she bought her house in October 1956 and has lived on Cambrian Drive, which is below the house where the construction is going on. She just wanted to confirm the fact that P. Sherman originally owned the property and wanted to go ahead and build from Cambrian Drive all the way over Mike Mary Court. That section of the lot was unstable and he could not build on it. At that point, one of the owners decided to buy two lots. She is concerned about stability. Also, she asked why this issue is coming to the MAC when it has already been to the County Planning review process. The address is listed in San Leandro even though it is unincorporated. Ms. Beatty said this area historically is in Castro Valley.

Sara Bortolussi, resident at 15982 Cambrian Drive, presented a letter to the council members and read part of it. The letter was entered into the record. She stated that there are a number of inaccuracies in the staff report that need to be brought to the MAC's attention. She respectfully requested the Council to recommend denial of the project.

Christian Nazareth, applicant's son, stated that the reason they are here is to decide if it was going to be 22 feet or 25 feet. The speakers are talking about things that were discussed 3 or 5 years ago and the council took care of that at that time. They are not here to tell the County how to do its job, they trust them. All they want to do is to raise it from 22 feet to 25 feet.

Ivan Norberg, resident at 15998 Cambrian Drive, stated that one year ago they had the opportunity to review the plans, and it had an address on Cambrian Drive. Today, all the information has no address other than behind 2417 Mike Mary Court. In some of the supporting documents, letters from Oro Loma Sanitary District, which would be a Cambrian Drive address now it is on Mike Mary which is actually Castro Valley Sanitary District. The change of address moving across the hill, changes a lot of documents and they need to be updated when the next review comes around.

Ken Iwasa, resident at 2409 Irma Way, stated that he is concerned with the view impact. The architect has tried to do what he can to minimize the impact, but he does not believe that they have measured the full intent to what they previously agreed to and being one of the homeowners at the top of the hill, he is concerned that if the site is not correctly developed, there could be some land slides. He is concerned about liability.

Clyde Nazareth, applicant's son, stated that building a house in an existing neighborhood it is going to be hard; there will be issues, neighbors will be impacted one way or the other whether by noise for the construction itself or the house itself may block a portion of the view. Part of the problem here is that they have already been through a process on whether or not this property can be built. A lot of issues have been brought up on whether it is safe to build a house here. Their intention in building the house is of course to have a safe property on top of the hill, there is no benefit to have a house that slides down the hill. More importantly, there must be understanding from both parties, no matter what happens, there will be some view loss. There are a lot of things that he disagrees with, people need to accept the fact that the only issue in question is the height of the house. By moving it down the hill the impact to the view is the same, if you look at the elevation, it would remain the same.

Jeff Torres, from the Castro Valley Forum, stated that back in 1956 this property was considered not buildable. Yet, in 2002 the County Board of Supervisors said it was OK to build. He asked what has happened in between. What has happened in that time frame? Ms. Beatty explained that in May 8, 2002, Variance V-11587 is to allow a building site status on this lot without frontage on a county approved road. Access to the property will be provided through a 20 foot wide access easement through 2417 Mikemary Court.

Mr. Nielsen asked Ms. Nazareth if she contacted the neighbors. Ms. Nazareth said no and no one contacted her. She said that one house has already been built there, nobody has been damaged. Mr. Nielsen asked her what she has to say in rebuttal. Ms. Nazareth said they are in compliance with all County and Zoning regulations. It is in the preliminary stage to build the second house. Nothing has been done yet.

Ms. Adesanya asked Ms. Nazareth, based on what she and her sons have said, if they are willing to comply with all of the conditions of the 2002 or previous Planning Department and Board of Supervisors approval, except that she is asking for a height, otherwise she is willing to comply with all the other requirements. Ms. Nazareth said yes. Ms. Adesanya asked Ms. Beatty if by moving the house lower it violates the original conditions of approval. Ms. Beatty said that the applicant at 2002 had agreed to move the house down, but they are increasing the height.

Ms. Miraglia asked about the reported illegal grading. The applicant said the County was not there, and asked if there was illegal grading or not. Ms. Beatty said that there was a violation. In a communication from the Grading Division in September, the applicant received a grading permit corrected violation. She said that the violation has been removed. Ms. Miraglia asked if the new soils report and the other requirements has been done. Ms. Beatty said that in an application such as this, a typical investigation would be required by the Grading Division prior to any issuance of building permits, something that the Planning Department has requested. It is a common condition of approval, however, Planning is not recommending this as a condition of approval. Planning is recommending denial.

Li-Sheng Fu, architect, stated that the location of the building is closer to the frontage for the access road. The reason is to minimize impact of the lot, is closer to one side instead of further down into the middle of the lot. We can try to make it 22 feet, the height limit. Some neighbors asked if it was going to be one story. He said yes, from the entry to the building is one story and it goes down slope, on the further down side becomes two stories. From the study of the view, the section of the site and also from the plan view of the site you can see all the neighbors set back, they have 180 degree view. The new building will impact 30 or 40 degrees of their view. That is why we provide those sites section and also the building section.

Public testimony was closed.

Mr. Moore said that the history on this project gives very clear direction on how to proceed and it is hard to agree to a deviation in a request for a variance. Significant consideration will be given to the neighbors for site issues. Mr. Moore mentioned to Ms. Beatty that the speaker referred to CEQA guidelines. They are very valid points and what was the county's response to the issues brought up. Ms. Beatty said that she does not have the guidelines. Mr. Nielsen said that this is a touchy subject. Ms. Beatty said that there has been quite a bit of discussion about slope measurements.

Ms. Miraglia indicated that the applicant's sons said that they have been through a process and but they have made some commitments and those commitments need to be honored to go forward. Her recommendation is denial.

Ms. Adesanya said that the only deviation to the original conditions of the building site is the height. A denial will not prevent them from coming back. Ms. Beatty said that was

one of the things stipulated, the Board of Supervisors 22 foot limit on the height. Ms. Goodbody indicated that she is willing to hear the applicant again once those prior commitments have been honored.

Ms. Sugimura said that it seems that the issue is height and she does not have a problem with this issue.

Mr. Moore indicated that if the applicant came back with a 22 foot height, where would it have to go on the site, would it technically move down the hill and what consideration do they need to make in the site development review process. Ms. Beatty indicated that there is not a view ordinance and the decision on the Site Development Review will come from the Planning Director to either approve it or deny it.

Ms. Adesanya said actually it should call for another variance because if the previous variance says one of the conditions to establish if the building site is 22 feet and we changed that, it is no longer a building site. Ms. Beatty said specifically at the language that the WBZA uses, if it was a strict condition of approval, we want the applicant to look at this if that is the case. We have to go back and look at it. Ms. Beatty said she will take a close look at the minutes.

Mr. Nielsen said that if the Board of Supervisors was specific about the 22 foot height, then the applicant has a chance to consider submitting a revised plan. There is not an objection to put a home on the site but complying with the restrictions that the Board of Supervisors and the WBZA placed on the site, and asked Ms. Nazareth if she would like the opportunity to continue the item and to make sure that she agrees with the compliance of the restrictions. Ms. Nazareth said yes.

Mr. Moore suggested that on the continuance, Ms. Nazareth meets with the neighbors and solicit their input and try to come to an agreement. Mr. Nielsen said the item will be continued. Ms. Nazareth will assure the neighbors that next hearing will be noticed when the applicant is in compliance with previous restrictions on the project.

Ms. Miraglia said that the Council needs to clarify that part of the Board of Supervisors resolution that states that the use will not be detrimental to persons or property in the neighborhood, since the applicant agreed to limit the building height, that means that not only you limit the building height but where you are moving it to, it needs not to impact the people to such a degree that it becomes detrimental.

Ms. Goodbody said that as part of that process, if staff will be looking at the CEQA section that was mentioned early in public testimony into the slope and whether or not that is exempt. Ms. Beatty said yes.

**TENTATIVE MAP, PARCEL MAP – PM- 8757 - DUNG-GIPSON -**  
Application to subdivide one site into three parcels, containing approximately 0.68 acre in a R-1-CSU-RV (Single Family Residence, Conditional Secondary Unit with Recreational Vehicle) District, located at 19388 Lake Chabot Road, east side, 250 feet

north of Barlow, unincorporated Castro Valley area of Alameda County, bearing County Assessor's designation: 084B-0529-035-02. **(Continued to December 12, 2005)**

**F. Open Forum**

Mark Crawford, resident at 3832 Somerset Avenue addressed the council on the EBMUD 25 acre property located on Carlton Avenue in Castro Valley. He stated that EBMUD will soon be selling this property. He would like to see some of this land dedicated as park land for Castro Valley. Mr. Willeyard, General Manager for HARD, would like to form a task force to explore possibility of securing some of this land for a park. The best case scenario would be for EBMUD to dedicate to HARD the park land as a philanthropic donation. EBMUD is a very wealthy municipality. He asked the MAC for assistance in that endeavor. There is a lot of interest in the community for this to become reality. Supervisor Miley would like to be on the task force. We would like to get as many community leaders on that task force to pressure EBMUD to make that donation so HARD does not have to come up with the money to buy the land. He spoke with the soccer league and the baseball league and they are willing to donate their masses to this endeavor. His children are in these leagues and they spend a lot of time in the parks. He officially asks for CVMAC assistance.

Discussion ensued amongst councilmembers on the possibility of having the council involved in this endeavor and if it would be appropriate to invite EBMUD to one of the MAC meetings. Ms. Henninger suggested that they be invited to attend the general purpose meeting.

**G. Chair's Report**

Mr. Nielsen said he will ask Supervisor Miley to run the agenda for the next community meeting regarding the left hand signs and the U turn signs on Castro Valley Blvd.

An audience member inquired about PM-8757. Mr. Nielsen informed the speaker that it was continued. He said he received the notice in the mail. Mr. Nielsen stated that the item will be re-noticed.

**H. Committee Reports – None.**

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

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

**K. Adjourn – The meeting was adjourned at 8:35 p.m.**

**Next Hearing Date: Monday, December 12, 2005**

