

**CASTRO VALLEY MUNICIPAL ADVISORY COUNCIL**

**Minutes for April 24, 2006**

(Approved as submitted July 10, 2006)

- 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, Carol Sugimura, Cheryl Miraglia, Karla Goodbody and Ineda Adesanya. Council members excused: None. Staff present: Sonia Urzua, Tona Henninger, Bob Swanson and Maria Elena Marquez. There were approximately 15 people in the audience.
- B. Approval of Minutes of April 10, 2006.**  
**Ms. Sugimura submitted the corrections for the April 10, 2006 minutes. Ms. Sugimura made a motion to approve the minutes of April 10, 2006 as corrected, with a second by Mr. Frank. Motion carried 7/0.**
- C. PUBLIC ANNOUNCEMENTS.** – None.
- D. Consent Calendar**

The purpose of the Consent Calendar is to group routine items that may be approved by one motion, unless a request for removal for discussion or explanation is received from a member of the Council or a member of the public. If discussion is desired, that item will be removed and considered separately before Regular Calendar items on the agenda.

- 1. VARIANCE, V-12000 – DANIEL L. DEL RIO** – Application to allow construction of an attached addition (Garage) providing a 6 foot side yard where 15 is the minimum, in a R-1-L-B-E-CSU-RV (Single Family Residence, Limited Agricultural, 5-Acre Minimum Building Site Area, 100 foot Median Lot Width, 30 foot Front Yard, Conditional Secondary Unit, recreational Vehicle Parking), located at 8216 Crow Canyon Road, west side, ¼ mile north of Norris Canyon Road, unincorporated Castro Valley area of Alameda County, bearing County's Assessor designation: 085-1750-005-22. **(Continued from April 10, 2006).**
- 2. VARIANCE, V-12001, ACRO ELECTRIC** – Application to install a detached accessory structure in the front half of the lot, 20 feet from the front lot line where otherwise permitted in the back half of the lot, or 75 feet back, in a R-1-L-B-E (Single Family Residence, Limited Agricultural, 5a.c. Minimum Building Site Area, 300 M.L.W, 30 F.Y.) District, located at 6161 E. Castro Valley Blvd., south side 250 west of Palo Verde Road, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 085A-0550-013-01.

**Mr. Frank made a motion to approve Variance, V-12001 with a second by Mr. Moore. Motion carried 7/0.**

**E. Regular Calendar**

Mr. Nielsen informed that item # 2 on the Regular Calendar, V-11998, Donovan McKeever, will be heard last at the request of Mr. McKeever.

1. **VARIANCE, V-11982 – PATRICK A. LOVE** – Application to allow a garage conversion with on-site parking in the side yard, in a R-1-CSU-RV (Single family Residence, Secondary Unit, Recreational Vehicle) District, located at 3773 Cottage Court, north side 284 feet west of Parsons Avenue, Castro Valley area of unincorporated Alameda County, bearing County's Assessor's designation: 084D-1329 -017-00. (**Continued from March 13, 2006**).

Ms. Urzua presented the staff report for Variance, V-11982, Patrick Love. This item was before this Council on March 13, 2006. The item was continued given an issue with an easement agreement between the applicant and a neighbor. The easement as proposed at this point would be temporary and the Council requested that the applicant try to acquire a permanent easement that would run with the land.

Mr. Nielsen called the applicant to the podium. Mr. Love said that he and his neighbor had not reached an agreement as yet. Mr. Nielsen asked Mr. Love if he was asking for an extension. Mr. Love said no and he knows that the next step is going to the Planning Commission. Mr. Nielsen asked Mr. Love if he wanted a decision made at this hearing. Mr. Love asked Mr. Nielsen if he can present his case because the entire Council is present or does he go by what was said the last time. Mr. Nielsen told him this is his choice if he wants to present it again. Mr. Love said that he applied for this variance because when he moved to this house, the garage was converted and he and his wife made plans to fix it up because prior to that the floor was not in good shape; they only used it for storage. They inherited some furniture from family members so they decided to turn it into a dining room. All they did was to make it a little more livable. With regard to parking, they are required to have one parking space; they are 5 feet short from the set back that the County imposes upon their property. He went to his neighbor and asked him for an easement so he could park 5 feet on to his property which does not infringe upon his parking at all; they share that area. He has plenty of room to park on his space. He stated that across the street from his house there is no house that faces that area so there is a lot of room to park 5 or 6 cars over there. Their street is only 32 feet wide and it is not a through street.

The Council also seemed concerned about people parking their boats and trailers in that street. The easement agreement said that we would not use that space for parking RV's, boats or trailers. It is not a permanent agreement, but it is something that he and his neighbor had considered. He would like to keep his garage as a dining room. He has a place to park on the front of his driveway; he has sufficient amount of space. He also has cement all the way to the property

line, which allows him to put 3 cars. He has done everything that the County has asked him to do. Mr. Love stated that he and his neighbor have a good relationship and he came at the prior meeting to speak on his behalf. He does not need an extra parking space other than what he has. He does not park his truck in his driveway because it is steep. He has seen cars slide down the hill.

Mr. Moore and Mr. Love discussed alternative parking configuration involving modifying the existing front steps.

Mr. Nielsen asked Mr. Love if when he purchased the property, there was a disclosure that said that it was a garage and if there was a building permit obtained for converting the garage to begin with. Mr. Love said no, there was not a disclosure. This was the first house that he ever bought. They liked the fact that the garage was already enclosed. He said he did not know why the County did not come to inspect the property to see if it was converted or not. The State understood that he owed money. The County certainly knows when the house was sold but they never came up and inspected the property at all.

Mr. Nielsen asked staff that when a house is sold and is listed for sale if the County inspect the houses. Ms. Urzua said absolutely not. It is the buyer's burden to research any implications of the purchase including former building history.

Mr. Frank asked Mr. Love when he bought the property. Mr. Love said 23 years ago. Mr. Love explained the sequence of events throughout the application process given the development and adoption of the current garage conversion ordinance.

Mr. Nielsen asked Mr. Love what he was applying for. Mr. Love stated that he thought it was for the variance for the lack of parking and so he could keep the garage.

Ms. Adesanya asked staff about its interpretation of the November 24, 2004 variance. It was an application to retain a converted garage so as to locate one required on-site parking space partially in the front yard where otherwise not permitted. Was he trying to get tentative parking spaces at that point so the second required space was in the front yard not in the side yard? Mr. Love said he is only required to have one parking space because his house was built in 1952, and at that time there was only one space that was required. Ms. Adesanya asked Mr. Love if he was requesting that space to be in the front yard versus the side yard. He was requesting that it be on the driveway. The driveway at the time was only 9 feet wide. Ms. Adesanya said she still wants to clarify the difference between the front yard, now he is asking for the side yard 5 feet on the easement, if he has space in the front yard. Ms. Urzua said that Ms. Adesanya's observation is correct – the proposed parking space had different placement at that time.

Mr. Frank asked Mr. Love if he was considering taking the porch steps out and making it a continuation of the driveway. Mr. Love said no, it was never a consideration.

Mr. Moore proposed other options to the application in order to avoid relying on an easement.

Mr. Moore asked how many parking spaces are required here. Ms. Urzua said one.

Ms. Adesanya said that according to her interpretation either a variance of the garage conversion policy which does not allow parking within the front 20 feet or a variance based on a non-enforceable easement. Ms. Urzua said that the real issue is whether affirmative findings can be made to criteria set forth in the Garage Conversion ordinance. She clarified that the first criterion was the obstacle for the subject proposal.

Mr. Nielsen asked Mr. Love if there is space in the backyard to expand the house. Mr. Love said he has about 8 feet in the back and then his property starts up again. Mr. Nielsen asked if it could have been graded and retained and built in the back. Mr. Love said it would have been really expensive. It was never an issue to build in the back when he was here before. Mr. Nielsen told Mr. Love that expansion on homes if there is room on the property for expansion, expansion should be in that order rather than enclosing a garage for convenience and therefore running into parking problems in the front. Mr. Love said he did not enclose the garage for convenience. It was already enclosed with no permit.

Ms. Urzua informed the Council that the adjacent property with which the easement agreement appears to have been arranged also submitted a petition for site development review related to an existing converted garage. It is unclear how this easement might affect that site development review. She proceeded to explain the two ways garage conversions are analyzed under the current ordinance.

Mr. Love explained the configuration of his street and the similarities with his neighbor's property.

Ms. Adesanya asked staff if the applicant can seek a variance from the Ordinance. Ms. Urzua said that is correct. Ms. Adesanya said that the Council should consider the November 2004 variance to allow parking within the front yard set back which is a variance from the ordinance as opposed to the side yard easement agreement which is a try but unenforceable. Ms. Urzua said that that petition was withdrawn by the applicant.

Mr. Moore said it was a nice try in the side yard but he can not support that unless the applicant has a permanent easement. He recognizes the circumstances in Mr.

Love's property but he can not support a variance with parking in front of the original side yard set back. There are a lot of houses that do that.

Mr. Love said that he is willing to go back to his original petition in order to get this Council support of having the one parking space for the variance where one is not available. Mr. Nielsen told Mr. Love that there is a problem with the garage conversion. He can go back and reapply for a variance to convert the garage and a variance for the one parking space. The Council can make a decision tonight for what he applied for or he can go back and apply for a variance for both parking space and the garage conversion. Mr. Nielsen told Mr. Love to work it out with county staff if he wants to continue it.

Ms. Henninger said staff previously had difficulty in connecting with Mr. Love. She suggested clarifying about when. The Council suggested that an amended application should come back to MAC the second meeting in May 22, 2006.

Ms. Adesanya asked staff when he will be required to submit his application. Ms. Urzua said within a week or so. Mr. Love asked staff how can he amend the application. Ms. Henninger said if he thinks that is not workable then we can extend it one more meeting, the first meeting in June. Mr. Love explained that he is a teacher and his schedule conflicts with the Planning Department hours. Mr. Nielsen told Mr. Love it can be scheduled for the second meeting in June.

Mr. Moore suggested that it be scheduled for July and told Mr. Love to work it out with staff.

2. **VARIANCE, V-11998 – DONOVAN McKEEVER** – Application to construct an attached garage and a secondary dwelling unit 3 feet, 2 inches from the side lot line where a six-foot setback is required, and to permit two independently accessible parking spaces where three are required, in a R-1-CSU-RV (Single Family Residence, Conditional Secondary Unit, Recreational Vehicle) District, located at 19349 Santa Maria Avenue, west side 300 feet south of Lux Avenue, unincorporated Castro Valley area of Alameda County, bearing County's Assessor designation: 84C-0570-125-03. **(Continued from April 10, 2006). This item will be moved to last item on the agenda.**
3. **SITE DEVELOPMENT REVIEW, S-2028 – LARSON/SAIDIAN** – Application to allow the construction of a two story, 9000 square foot retail and office building in the CVCBD, Sub 7 (Castro Valley Central Business District Specific Plan, Sub Area 7) located at 3226 Castro Valley Boulevard, north side, approximately 200 feet west of Santa Maria Avenue, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 84A-0112-011-00. **(Continued to May 8, 2006).**
4. **TENTATIVE PARCEL MAP, PM-7766 – L.C. ASSOCIATES, LP** - Application to subdivide one parcel containing 0.65 acres into five commercial

office units with common parking and landscape area, in a CVBD SUB4 (Castro Valley Central Business District, Sub area 4) District, located at 20700 and 20730 Lake Chabot Road, east side, approximately 320 feet north of Castro Valley Boulevard, Castro Valley area of unincorporated Alameda County, bearing County Assessor's numbers: 084A-0160-012-09 and 084A-160-012-10.

Mr. Moore recused himself.

Ms. Urzua presented the staff report.

Cliff Sherwood, representing L.C. Associates, stated that he has reviewed the staff report and he believes that they are in compliance with all the referral agency responses. He also reviewed the CC&R requirements and all those requirements are in the draft agreement which they will submit to the County. He just wanted to point out that this is also a concurrent boundary adjustment application in which they are removing the existing property line that sits between the two parcels.

Mr. Nielsen asked if all of the units can be reached from the entrance to the parking lot and if they do not have to use the common stairwell to go to the units. Mr. Sherwood said that 2 units will be on the second floor and there is an elevator and two stairways that service the second floor.

Mr. Frank asked if parking has changed. Mr. Sherwood said that parking is the same and the site plan is exactly the same that they submitted back in September.

Public testimony was called for. No public testimony submitted.

**Ms. Miraglia made a motion to approve Parcel Map, PM-7766 with the recommendations of the referral agencies and the CC&R's. Mr. Frank seconded. Motion carried. 6/1/1 with council member Moore recused.**

5. **TENTATIVE PARCEL MAP, PM-8893 – XUEQIANG CHEUNG –** Application to subdivide one parcel containing 0.86 acres into two lots, in a R-1-CSU-RV (Single Family Residence, Secondary Unit, Recreational Vehicle Parking) District, located at 2400 Stanton Hill Road, north east side, approximately 20 feet north east of West Ridge Court, Castro Valley area of unincorporated Alameda County, bearing County Assessor's designation: 084A-0185-024-00.

Ms. Urzua presented the staff report. She stated that the lot currently has two structures on it, both being used as residences; only the front structure has a building permit as a residential use. The second structure was previously approved by both the Planning and the Building Departments as an accessory structure. It has been converted into a residence. The applicant, the Planning Department and the Building Department have met and the Building Department has concurred that as long as the applicant came in within this week for a building

permit, the Planning department will approve the plans for “plan check” in order to start the process to legalize the structure if this parcel map was acted upon in the affirmative manner. Mr. Nielsen asked if there were any variances with the second building. Ms. Urzua said no, and the side yard should be fine. The current structure encroaches slightly into the side yard set back but as proposed, they would cut the building down to make the building conform to the side yard set backs.

Mr. Xueqiang Cheung, the applicant, stated that he just submitted the application for building permit this afternoon.

Public testimony was called for.

Mitch Sequeira, resident at 20111 West Ridge Avenue, stated that he is confused and asked if it is the RV parking he is requesting. Mr. Nielsen told him no, he told him that it is a lot split and if he meets County requirements, he can park the RV.

Public testimony was closed.

**Mr. Frank made a motion to approve Parcel Map, PM-8893 with planning considerations and modifications as directed by the County prior to this decision. Ms. Miraglia seconded. Motion carried. 7/0.**

6. **TRACT MAP, TR-7747 and SITE DEVELOPMENT REVIEW, S-2048 – K&Z HOMES** – Application to construct eight condominium units on one parcel containing 0.46 acres, in a R-S-D-15 (Suburban Residence, 1,500 square feet Minimum Building Site Area per Dwelling) District, located at 20378 Stanton Avenue, east side, approximately 187 feet south of Denning Court, Castro Valley area of unincorporated Alameda County, bearing County Assessor’s designation: 084A-0181-014-00 and the rear portion of 084A-0181-015-00. **(Continued from March 27, 2006).**

Ms. Urzua presented the staff report. She stated that the current property has 3 structures on it, two of which will be removed. Under the condominium guidelines, the petition falls short in terms of the floor area ratio, parking, domestic facilities and play areas. Comments were received from at least three homeowners and one is in support and the other in opposition. Ms. Urzua elaborated on the project’s deficiencies.

Mr. Nielsen asked staff about the setbacks related to covered parking requirement.

Mr. John Spaur, with Minert Architects, represented the Applicant. He stated that they do not have an issue with providing covered parking. He said they can cover half of the parking spaces, which would be approximately 8 spaces.

Mr. Nielsen asked Mr. Spaur if that would meet the county requirements. Ms. Urzua said no. Mr. Spaur said they can meet half of that. It is a set back limitation. They do not have a problem covering the spaces but when they first did this project they were told of the 75 foot limitation. They can only cover 8 spaces and meet the 75 foot set back. Ms. Urzua said that is a function of the parking being located in the front.

Joe Hasnain, with K&Z Homes, stated that they are the developers proposing to build 8 condominiums on Stanton Avenue. They have enough required parking space for each unit; they are short of couple of guest parking. As far as the project is concerned, he strongly feels that this will be good for the community. They tried to accommodate most of the requirements; they met the zoning requirements. There are some condominium guidelines that they can address and try to meet as much as they can. As far as the play area is concerned, he talked to Beth Greene, and he proposed there is a park 4 miles away from the site. He requested as a consideration the guest parking. The site is close to Stanton Avenue and close to Castro Valley Blvd., which is a main street and it is also close to public transportation. There is a storage area that they provided in each unit to the best of their abilities without compromising other design issues, and they do not have a problem providing covered parking. As far as unit orientation, there is some level of screening in the design to provide privacy for most of the units.

Mr. Nielsen asked Mr. Hasnain if his company owns the home that is directly in front of the complex. Mr. Hasnain said yes and that there are two houses that are on the property. Mr. Nielsen told Mr. Hasnain that he could meet the children's play area requirement by taking the northeast corner to the rear of the residence. Mr. Hasnain said that is not part of our property. His lot is "L" shaped. Mr. Hasnain said there are two existing houses in front of their property.

Ms. Adesanya asked Mr. Spaur if he had considered any other configurations. Mr. Spaur said yes, since the lot is "L" shaped they considered a configuration that went from the street towards the rear lot and was backed up away from the "L". He continued to describe circulation and fire access issues. They also considered a structure where parking would be underneath the structure but it would exceed the height limitations for the available floor area. Ms. Adesanya asked Mr. Spaur if he considered reducing density to see if he could meet more of the requirements. Mr. Spaur said they were not given those instructions. Mr. Hasnain said they reduced from 10 to 8 in order to meet the zoning requirements.

Mr. Moore asked staff if there is another regulation for open space of 600 square foot for the gross area; he said that the condominium guidelines require 300 square foot per unit. Ms. Urzua said in the RS that is correct that they will not have sufficient space. Ms. Urzua later corrected this statement and clarified that sufficient useable open space was proposed.

Mr. Spaur said that they have provided domestic storage in the interior to respond to staff comments. They realized the issue for play areas and they could probably make play areas into side yards that are common space right now. He said he was wrong about the issue of covered parking. They really could not accommodate that with the 75 feet set back. They would like to provide covered parking if they could seek a variance on that. The trash enclosure is actually screened with CM walls and gates fully enclosed. They try to provide balance with nice units for people that can move into an infill area and also meet the needs of the city.

Public testimony was called for.

Mrs. B.R, resident at 20380 Stanton Avenue, said there are actually 3 parcels, her house and then the two that Joe has bought, the parcel in the back. From what he is proposing, she thinks that is really good for Castro Valley because it is going to be something that is not rental and very good for her to have other parcels in back of hers that is controlled by the city. He is really willing to work with the neighbors as far as landscaping and everything to coordinate with their homes.

Public testimony closed.

Ms. Miraglia said that this project is too dense. The County spends a lot of time and effort in doing the condominium guidelines and in her opinion the floor area ratio has to come down, the covered spaces and the play area are needed and there needs to be open space. The number of condos needs to be reduced.

Mr. Moore said that the condominium guidelines are there for a reason. There are too many deficiencies for brand new developments to be able to support approval for its design.

Mr. Frank said that he agrees, if you lessen the density, you are creating a very small condominium complex and a lot of them do not work. Once you reach a certain level in size they do not work.

Mr. Nielsen said that he agreed with Mr. Frank. The Council recently approved the condominium conversion guidelines as well as condo guidelines and it would not be in the best interest of the community.

Ms. Adesanya said she agreed with mostly everything except that she is not particularly concerned with seeing a play structure but rather open space provided. She said that she had seen 2, 4 and 5 units condominiums built in Richmond recently. They work really well and provide all the typical amenities.

Mr. Nielsen said that there is one on Redwood Road that was approved not that long ago. They went the extra mile and provided enough space. They could have put another unit in there but they choose not to do so. They met the open space requirements. He was very pleased to see that.

Ms. Sugimura asked if the applicant would consider reducing the size.

Mr. Hasnain said that at this point it is going to be hard to make a decision. He asked if it was the open space, play area, covered parking and floor area ratio that the Council was requesting. Ms. Hasnain said they do not have a problem with the covered parking

Mr. Moore told Mr. Hasnain that if he has to change the design or request a variance to try to achieve it, he might want to consider that. Regarding the trash, he understands why he put it there. We need to give some consideration from the technical standpoint. It is a good quality design. Mr. Hasnain said they can put in front of the parking lot. There are 3 guest parking spaces on the site and there is 2 allowed on Stanton, so that makes 5. They are only short of 3 guest parking spaces; there is only one required per the guidelines. Mr. Moore said it is a brand new development with a deficient parking from the guidelines and he said he has a problem with that.

Mr. Hasnain said that they are dedicating the front 25 feet to the County for right of way which was actually part of the area that they paved for. It is something they understand that they have to do but they ran short in the whole set up. He did not know that they have to dedicate the first 25 feet to the County for right of way. He started working with Mr. Sawrey-Kubicek and the main issue was meeting the zoning ordinance. Based on that, he bought the property but there are some economics that go into a development to make it worthwhile. They started with 10, then went to 8. It is going to be a problem to reduce the number of units. They can make some minor changes as suggested, covered parking, trash enclosure location. Guest parking: they thought they are close to Castro Valley Blvd. Open space and floor area ratio: according to the staff report they meet the private open space requirements, but not the overall. Because it meets the zoning requirements he thought it was going to be approved because the Council encourages new developments. To make smaller condominium complex, it is also difficult to the homeowners association; the more units you have, the more money they have. It is very hard to go through the "DRE" (Department of Real Estate). They looked at all different issues and they thought that this was an optimal design. It is difficult to meet all the guidelines. They will try to do everything they can to accommodate.

Mr. Nielsen asked Mr. Hasnain and Mr. Spaur if they want the Council to make a decision at this hearing or would they prefer to come back. Mr. Spaur said they went in many directions of the site plan trying to meet the development requirements for density but also practical requirements. When he started moving the parking around and other considerations as to how many spaces they have on the site, it really does affect the density. It takes away three units from this project.

Mr. Moore said that taking the economics aside, and looking at the merits of the project, it is too dense.

Mr. Spaur said the 8 units might make sense but they can reduce down in size to provide greater open space, and also add play area to meet the requirements better. They could reduce the unit size but maybe not the density.

Ms. Adesanya asked staff if this would be a candidate project for a planned development. Ms. Urzua said not necessarily. Ms. Adesanya said that maybe they can offer something to the County in exchange for some exceptions and process it as a planned development and maybe we can consider a condominium candidate for that. Ms. Urzua said it could be a planned development; it is too where if a design is optimal then the County can consider relaxing the terms of the set back requirements. There seems to be some space for this project worked in terms of getting all the requirements that are needed

Mr. Nielsen asked Mr. Hasnain if he would like to continue the matter to give himself an opportunity to do that rather than to make a decision at this hearing. Mr. Hasnain said yes. Mr. Spaur said that the biggest issue would be to meet the covered parking requirement and the floor area ratio. Mr. Hasnain said they meet the requirements except for the guest parking. Mr. Spaur said the guest parking is going to be an issue. Mr. Nielsen said that the real issue is how to accommodate covered parking. Mr. Nielsen asked Mr. Hasnain if he feels he can do something with the parking. Both Mr. Spaur and Mr. Hasnain said they will try. They would like to come back in two weeks. Mr. Spaur asked staff if it would be possible to apply for a variance to provide covered parking within the 75 foot set back. Ms. Urzua said yes but she told him it would not be processed in two weeks. Mr. Nielsen asked if there are any other concerns that the Council can see at this point. Mr. Hasnain said they are committed to come back with the changes.

7. **VARIANCE, V-11998 – DONOVAN McKEEVER** – Application to construct an attached garage and a secondary dwelling unit 3 feet, 2 inches from the side lot line where a six-foot setback is required, and to permit two independently accessible parking spaces where three are required, in a R-1-CSU-RV (Single Family Residence, Conditional Secondary Unit, Recreational Vehicle) District, located at 19349 Santa Maria Avenue, west side 300 feet south of Lux Avenue, unincorporated Castro Valley area of Alameda County, bearing County's Assessor designation: 84C-0570-125-03. **(Continued from April 10, 2006).**

Ms. Urzua presented the staff report.

Mr. Moore stated that since the last meeting, Mr. McKeever called him to discuss this project and asked him questions regarding procedures.

Mr. Donovan McKeever stated that the basis for this design is to try to add on to his house and create an in-law unit for his grandmother. He is asking for two

variances. One of them is an improvement, although the existing is a detached one car garage, has 32 inches set back in the side of the property and he is asking for 3 foot 2 inches for new the structure. Looking at the site map, it is built out 32 inches from the side and in the rear the storage building is built all the way to the property line. It is a big improvement for the property itself on the set backs. He believes that this proposal will add value to the property and the entire neighborhood. He walked the street and talked to his neighbors about this proposal. He got some signatures and he showed the neighbors the full set of maps to show them what he was doing and hopefully get the approval from his immediate neighbors. They are in favor of this design. There are other possibilities, but he does not agree with them. It can be done without a variance where it can be built 80 and 90% of this lot and devote 30% to parking and pave driveway surfaces. He thinks it is not good for the community or property at all. The parking situation is the other variance. According to some pictures that he showed, no one parks on Santa Maria Avenue, so he understands that he needs to provide parking. The proposal has 5 parking spaces already. The street parking is not an issue. He said that he tried to take these pictures at different times. His neighbor's set back is 14 feet, you can see how they park and it is not a problem. During school days there is no parking on his side of the street on Santa Maria and he understands that is for the residents; he believes that is why the ordinance came about. He never heard of any kind of residential permit. He provided some photos; there are quite a few developments where the parking is 12 to 14 foot set backs. The garage he is proposing is technically a one car because it only has 16 feet; they can not really get in any closer with the design but he does not meet the requirements for the 3 independent spaces. There are some monster houses with one car garages and space for maybe 1 or 2 cars in the driveway. There are also a lot of homes with no garage, legal or illegal but they are there.

Ms. Miraglia asked Mr. McKeever if he looked at the staff report; staff suggests that he may be able to develop a second unit and provide adequate parking without a variance by putting garage in the back, and putting a parking pad next to it if there is an issue with that. Mr. McKeever told Ms. Miraglia that the issue is according to the site map he has a family room in the back. If he adds that unit, he has to devote a whole right side where he is proposing the new garage to be. That will have to be all driveway and parking, you have to turn the in-law unit into the back yard and make a second level; put the garage on the bottom floor. Basically, what he is asking to do is build out 80% of the lot and devote 30% of the lot to parking and paved surfaces. Maybe to some it makes sense, but it does not to him.

Mr. Nielsen said that to do a side yard set back with 6 feet it will take on the existing garage and move the garage door over. Mr. McKeever said it is technically a one car garage and will be a one garage because it is only a 16 feet garage door, by what he understands is 18 feet, so he would like the garage to be as big as possible. The house was built in 1928 and has absolutely no storage space at all.

Mr. Nielsen said that by trimming 3 feet then it eliminates the need for a variance for the side yard and he would not need a variance. Mr. McKeever said he will need a variance on the parking, because 3 independent spaces are required.

Mr. Moore said he does not have a problem with the side yard set back only because it is better than it was. It can be proposed that Mr. McKeever change the addition, he felt that the existing garage was better than it was. The possibility of changing in design was discussed.

Mr. McKeever explained that he was willing to place the third parking space in the front yard.

Mr. Moore suggested that the applicant change his proposal from a secondary unit to an addition. This would eliminate the extra parking space requirement.

Mr. McKeever said that as he goes around his neighborhood and sees all the illegal dwellings, he tried to do this legal and go through the proper channels. He understands there are codes and laws. We should be able to look at the spirit of the plan instead of the letter of the law. Mr. Moore asked staff why staff would have to look at it this way.

Mr. Nielsen said that would eliminate the need for that third parking place and asked Mr. McKeever if it would be acceptable for him. Mr. McKeever said no. If he has to amend the plan, it was not obviously why he came to this hearing.

Mr. Moore told Mr. McKeever that the issue is similar to one heard before: the red car is sliding over you have a two-cars garage, the third car could be the front yard set back. He feels everyone else has special privileges and he does not.

Mr. Frank asked if the garage has a one hour fire wall or two hour fire walls. Ms. Urzua said that is part of the building code and the Fire Department; they both enforce that type of regulation and the rule is if it is on the property line then it needs one hour fire wall or separation of at least 3 feet from the property line. Mr. Frank asked if the Council can make a recommendation in terms of fire wall or separation requirements. Ms. Urzua said that if the Council were to make a recommendation to approve, than you would have to make the findings for the variance to go below the 6 feet setback required.

Ms. Adesanya told Mr. McKeever that the 3 foot 2 inch set back could be greater but he is trying to maximize his storage back there since his house is old and did not have storage. This is something she would like to see happen.

Public testimony was called for.

Mary Martin, resident at 413 Forest View and Mr. McKeever's grandmother, indicated that she would love to have a place of her own to take care of herself. She stated that she would really appreciate having a little house of her own and be self sufficient and have a little garden, plants and flowers. Also, she would be able to walk from her house to level ground and live near her family.

Randy Jones stated that he designed this project. This is existing set backs. Mr. McKeever said this was a detached garage but it is attached. What they are doing is creating a bigger set back than what is existing now. We may need to go ahead and eliminate the variance on the side and go to 6 feet. Originally they were told that all the side yard and set back were 5 feet but 6 feet could work. They have this option to build everything around the back of the house and they would not have a variance. They have several rear yard variances. Also if you use all this paving to get to the garage behind, then we would be in conflict with the run off, which is going to go into effect in August and has already been applied for. The more we manipulate this, the worse it gets. We meet the requirements for the in-law unit. Initially we did not worry about all those cars because they don't have a lot of cars. Mr. Jones continued to discuss the shortfalls in terms of the parking requirements. It is a little bit of inconvenience for the owner. We even have room to park in the 20 foot set back behind that but if we did that, that would still be in tandem but we can park to the side of the driveway. He described a similar property with similar conditions. So it is a little bit of a variance and anything that we do to move anything to the back, makes it worse because of the paved areas and the set backs and the coverage. He opined that this is by far the best plan.

Public testimony was closed.

Lisa McKeever, resident at 19349 Santa Maria Avenue and applicant's wife, said that the Planning Department told them that they did not need a variance if they built the in-law for her husband's grandmother and put a parking in there but she found it very odd that listening to the condo plans require a play ground for condominium structure but you want them to take away the back yard for their children and play in the busy street, that is what is being proposed. She is very disappointed with this whole process, everybody else is doing it illegally, they do not get variances, and they do not get permits. If they did this illegally, their grandmother could live there, but by doing it the right way she felt they are being penalized.

Ms. Miraglia said that if there is a little hallway here that connected the two so they could go into the house into their separate entrance still connected to the house with a separate entrance. She asked the applicant if they really need a separate entrance.

Mr. Frank said that the tenor of the State of California is directing the County of Alameda, all counties, cities and municipalities, they want to have a place for in-

law units. Considering what has been discussed, put the parking in the front as suggested by the builder; he said he does not have a problem with this at all.

Mr. Nielsen expressed concerns with the side yard set back. He also stated that he does not like to see cars in front yards, because it sets a bad precedent.

Ms. Miraglia told McKeever that she had no issue with having his grandmother living there and having an in-law unit. What happens is when the property is sold that is when the issue comes in because somebody else could rent it out, they might need 2 or 3 parking spaces. Currently, there is a reasonable accommodation policy that is in front of the Board of Supervisors where it might be possible to get a variance for reasonable accommodation for as long as it is needed but it is not final yet. Ms. Henninger said it is actually going to unincorporated services meeting on Wednesday night.

Randy Jones said that even if you are going to rent it out to future people, you would only have to have the number of stalls we are proposing now. In most places, they allow you to cut the street parking. There is no restricted parking on that street. Ms. Henninger said yes, parking there is restricted.

Mr. Nielsen said he agreed with Ms. Miraglia and asked if the Council could condition the variance based on the affirmative application of the reasonable accommodation policy?

Mr. Moore said there are extenuating circumstances, to grant a variance as it is. He agreed with Mrs. McKeever, they could have done it the wrong way to make an existing situation better and provide covered space; they have more space than anyone else in the neighborhood has. The Council can also grant a variance and as a condition of approval ask to have an overly wide driveway.

Ms. Henninger explained that the applicant can not pave more than 50% of the total frontage.

Ms. Adesanya asked for clarification on the location of the parking spaces being proposed.

Ms. Adesanya said that she is looking at a difference between a space in what is now grass putting more pavement in the front versus allowing a variance for tentative parking. Mr. Jones said they are going to use turf so it will still be grass.

Ms. Urzua said that the petition before us is a reduction of the side yard set back, and to permit two parking spaces where 3 is required. The discussion has evolved into where a third one might also be located.

Ms. Adesanya asked for further clarification on the location of the parking spaces being proposed. Mr. Moore said that as long as the widths work that would solve the technical problem. Mr. Jones said he can make it work.

Ms. Urzua clarified that the staff report explains that the set back between the existing garage and the dwelling is OK. The building permit history explains that the existing breeze way is illegal. The building is actually a detached structure so the set back is actually okay. The staff report clarifies that the breezeway should be removed or a separate variance and building permit sought if it is to be retained. There is actually no current issue with the structure as it is and therefore the argument that the proposal would correct a setback deficiency is not accurate.

A discussion ensued among council members, Mr. McKeever and Mr. Jones in regards to the location of the additional parking spaces considering the required set backs. Ms. Henninger said the Council needs to vote on what is before the Council, if there is something that changes, it can be continued and bring it back.

**Mr. Moore made a motion to approve Variance, V-11998, with the provision that the applicant is responsible for working with staff to ensure that they have two legal conforming parking spaces in the configurations shown in the application. If not, he has to bring it back. Mr. Frank seconded. Motion carried 7/0.**

## **F. Open Forum**

Francois Koutehouck indicated how difficult it is to put solar panels in this County. He described his dissatisfaction with the variance process while attempting to install solar panels on this property. He suggested that the Council make a statement in favor of solar panels. His point is he is spending his time trying to educate people so we can ease the process for the people in the future. Second, he asked how do we get an ordinance modified so there is a fast track or exclusion for solar panels into the County. What would it take to get an approval from this Planning Department not have to wait for the BZA hearing.

Mr. Nielsen told Mr. Koutehouck that the open forum is for information; Mr. Nielsen requested information and a status report on how this process is going and how the Council can speed it up for applications related to the installation of solar panels.

Ms. Henninger said we can not discuss it in any sort of detail at that immediate time.. However, staff could take that information, make it a formal agenda item at a regular hearing or can be incorporated in the general purpose meeting agenda. Ms. Goodbody said that he is asking for streamline process. Ms. Miraglia told Mr. Koutehouck to talk to supervisor Miley's office. That is the way of getting the ordinance changed. Mr. Swanson said that his office is looking at this issue.

Mr. Moore asked if the reason was a set back issue, the structure of the set back or the location of the set back.

Ms. Urzua said Mr. Koutehouck's variance application was before the Council not because it involved a solar panel. It was more so related to the characteristics of the accessory structure and the location. Ms. Henninger said she would be cautious, it was a consent calendar item, it was not pulled off as a regular item, it was passed on the consent calendar. If the specifics are going to be discussed, it should be pulled off the consent calendar and bring it back as a regular agenda item. We are going to move forward, get his information and put it in a formal agenda.

Mr. Frank told Mr. Koutehouck that it can be discussed in the general purpose meeting in terms of a generic issue.

**G. Chair's Report – None.**

**H. Committee Reports**

- **Eden Area Alcohol Policy Committee**

Ms. Henninger said that the next meeting is Wednesday morning. At 10:00 a.m. at Supervisor Miley's office. It is a standard agenda.

- **Redevelopment Citizens Advisory Committee – No report.**
- **Castro Valley Parkland Committee**

Mr. Nielsen said that the survey is in the process but the results are not yet available. They will be ready very shortly.

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

Ms. Henninger said that the Reasonable Accommodation policy is going back to the Unincorporated Services meeting is Wednesday night at 6:30 p.m. That is on the agenda and open for discussion.

Ms. Urzua said that two of the items that were considered in the April 10 meeting are going for the BZA this Wednesday so she will report back to the Council next time. The items are: Mrs. Null's attached car port, and also Mr. Runolfson, fence/horse issue.

Ms. Adesanya asked about the status of the Redevelopment issue of residential on the Boulevard, and about mixed use development. Mr. Nielsen said that the Planning Commission is looking for a definition.

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

**K. Adjourn**

Meeting was adjourned at 9:00 p.m.

**Next Hearing Date: Monday, May 8, 2006**