

CASTRO VALLEY MUNICIPAL ADVISORY COUNCIL

Minutes for August 28, 2006

(Approved as corrected September 25, 2006)

- A. CALL TO ORDER:** The Chair called the meeting to order at 6:30 p.m. Council members present: Dean Nielsen, Chair; Ineda Adesanya, Vice Chair; Jeff Moore; Andy Frank; and Cheryl Miraglia. Council member excused: Carol Sugimura. Staff present: Steve Buckley, Shahreen Basunia, Bob Swanson and Maria Elena Marquez. There were approximately 10 people in the audience.

B. Approval of Minutes August 14, 2006.

Ms. Miraglia made the following corrections: page 2, first paragraph, delete “have” in front of “most” in second to last sentence and insert have after “units”. Seventh paragraph, first sentence should read “Ms. Miraglia said that it is a different outlook when you ‘address’ a problem by simply providing statistics from a study.” Page 3, third paragraph, last sentence, should say: “frankly regardless of where the parking problem starts on the street, the issue is the problem exists.” Mr. Frank made the following correction: page 2, eighth paragraph, should say after density increase: “but we need to address design details on a project by project basis”. **Ms. Miraglia moved approval of the minutes of August 14, 2006 as corrected. Mr. Frank seconded. Motion carried 5/0/1 with Ms. Sugimura excused.**

C. PUBLIC ANNOUNCEMENTS

None.

D. Consent Calendar

None.

E. REGULAR CALENDAR

- 1. VARIANCE, V-12016 – ALEXANDRU TET** – Application to allow conversion of accessory structure into secondary unit with A) 1 foot rear yard set back where 20 feet are required, B) 2 feet – 8 inches side yard where 6 feet is required, C) 8 feet between structures where 10 feet is required, in a R-1-CSU-RV (Single Family Residence, Conditional Secondary Unit, Recreational Vehicle) District, located at 18787 Carlton Avenue, in the unincorporated Castro Valley area of Alameda County, bearing Assessor’s designation: 084B-0420-004-03

Ms. Basunia presented the staff report. She indicated that the main building had been converted to a six bed care facility. According to state regulations, a care facility with six beds or fewer is permitted and is exempt from any discretionary permit of the local government. State law also provides that the secondary unit is

permitted in the zoning district, if all local standards are met. Ms. Basunia stated that the secondary unit does not presently meet the local standards due to reduced setbacks and a lack of parking. There is space in front of the detached garage that is 14 feet wide and there is a 4 foot planter which, if paved, may be sufficient for two independent parking spaces, thereby meeting the requirement in combination with the other parking on the site. Staff has received several letters and phone calls from neighbors that are concerned with this proposal and with the construction that has been going on in this property for a while.

Mr. Frank asked staff if all building permits obtained a final inspection Ms. Basunia stated that the previous applications did receive final inspection including the patio cover, the two bedrooms, and the family room. Currently, there are two additional bedrooms that don't have a building permit, but were part of the original design as office and family room. The application for the detached garage has not received a final inspection as it is being considered with this application.

Mr. Moore asked if the care facility use issue was in question. Ms. Basunia concurred that it was not a part of this application. He asked if the use of the house is not impacted by the fact that there are 6 bedrooms. The dwelling was approved for a 4 bedroom house. Non-permitted remodeling brings the use issue into play. Ms. Basunia said that it may due to health and safety issues, but again that would be separate from the present variance request.

Ms. Adesanya inquired if the secondary unit could be used if the main dwelling isn't being used for the purpose it is intended for. Ms. Basunia replied that the use is still considered a single family dwelling and the secondary unit would be used as secondary unit.

Alexandru Tet, applicant, stated that he submitted an application for transforming the hobby shop to a secondary unit. He got a permit for the front, the roofing, the walls, the stucco, everything. He met some of the requirements but not all of them, and so was asking for this permit so he could complete the work.

Ms. Adesanya asked Mr. Tet to clarify if his son lives in the house. Mr. Tet said his son would be moving into the area and needed a place to stay. Ms. Adesanya asked Mr. Tet if the State license required that he has 6 beds. Mr. Tet said that that is the minimum.

Ms. Miraglia inquired as to the name of the care facility. Mr. Tet informed it is called Elim Assisted Living. Ms. Miraglia also inquired about the number of beds and care providers staying over night.

Mr. Frank said that the use is not in question.

Mr. Moore asked Mr. Tet if he had spoken with his neighbors. Mr. Moore asked what staff's recommendation was. Ms. Basunia said that staff recommends denial.

Public testimony was called for.

Leigh Kimmelman, resident at 18847 Carlton Avenue, stated that after the "stop work" order was issued he still saw a lot of work being performed. Basically, the structure is a house, it is not a garage, and it was clear that the applicant planned for it, as it looks fully functioning. A vast majority of the work has been done without permits or approval of the County. This applies to both the main and secondary unit. Permits and zoning ordinances apply to everyone, and any exception to this needs to be done in writing before the work is done, not after.

Ms. Basunia informed that there are fines and abatement process for unauthorized development and the applicant has been or will be assessed accordingly.

Sharron Bowen, resident at 18765 Carlton Avenue since September 1974, stated that Mr. Tet bought the property in December 2002. She submitted a packet of correspondence to each council member which she believes documents Mr. Tet's disregard for rules and regulations regarding building and construction.

Vincent Villalobos, resident at 18785 Carlton Avenue, concurred with the other neighbors. Mr. Villalobos mentioned that the residents of Carlton Avenue have noted and reported several instances of concern. Copies of two different letters sent to the Board of Supervisors in 2003 were entered into the record.

Michael and Michelle Evans, residents at 18765 Carlton Avenue, spoke against the project.

Lynn Gipe, resident at 18790 Carlton Avenue, spoke in support of the applicant.

Ms. Adesanya asked Ms. Gipe if she was affiliated with the facility. Ms. Gipe replied no. Ms. Adesanya asked if the building in question is a secondary unit and if she remembered when the building got larger. Ms. Gipe said that she lives across from the main house, and her recollection is that the building has always been there.

Glenda Villalobos, resident at 18785 Carlton Avenue, stated that the building (detached garage) was totally demolished and new buildings were built.

Ms. Adesanya asked Sharron Bowen about the pictures that she submitted. Ms. Bowen said that she is the actual source.

Samuel Tet, applicant's son, stated that he used to live in the property. Most of the work was done with permits; all of the lines, including plumbing and electrical, were done under permits to build a hobby shop.

Mr. Nielsen asked Mr. Tet if the original building in the back of the property was totally torn down. Mr. Tet said yes.

Ms. Adesanya asked Mr. Tet if there is any construction remaining to be done in the event this is approved. Mr. Tet answered yes. Ms. Adesanya asked Mr. Tet if there is gas and electrical installation. Mr. Tet said that originally there was a bathroom, with gas and electric for the boiler, so the only thing that needs to be done is to take the gas and electric from that bathroom and also extend to the kitchen. All utilities for the original bathroom for use as a hobby shop are there already.

Richard Villalobos, resident at 18785 Carlton Avenue, stated that when Mr. Tet built that hobby shop, he put a leaded glass door in the side. He said you don't do that for a hobby shop.

Public testimony was closed.

Alex Tet said that he has all the permits. This building and all the structures are done by permits and can function as a hobby shop.

Ms. Adesanya asked Mr. Tet if he had permits in 2003. Mr. Tet said it was for two retaining walls.

Mr. Moore said that maybe the permit issue is a secondary issue, and the Council should focus on the issue of variance findings. Ms. Basunia said that staff has not been able to make the findings to approve a variance.

Mr. Nielsen asked staff if a lot line adjustment would remove one variance request. Ms. Basunia said yes, he does have a concurrent application for a subdivision on neighboring property, and a lot line adjustment may solve one or more setback issues.

Ms. Miraglia asked whether, if the Council denies the variance, would the improvements need to be removed from the secondary unit. Ms. Basunia stated that the zoning ordinance does allow a 20 square foot half bathroom, but the kitchen items will have to be removed.

Mr. Frank made a motion to deny Variance, V-12016. Ms. Miraglia seconded. Motion carried 5/0/1 with Ms. Sugimura excused.

2. **VARIANCE, V-11978 and SITE DEVELOPMENT REVIEW, S-2051 – HERNANDEZ** - Petition to allow the conversion of an existing attached one car garage to living space and provision of two uncovered spaces in the rear, in the R-1-CSU-RV, (Single Family Residential, Conditional Secondary Unit, Recreational Vehicle Parking Restrictions) District, located at 4421 Alma Avenue, south side,

770 feet west of Brickell Way, Castro Valley area of unincorporated Alameda County, bearing County Assessor's Parcel Number: 084C-0820-014-00.

Mr. Buckley presented the staff report. He stated that the proposal is to convert the one car garage to a master bedroom and bath with interior access and eliminate the existing parking space. The County has an ordinance for garage conversions that was adopted in 2004 and it has 7 findings required for authorizing garage conversions. The process for approving garage conversion is a site development review with the Board of Zoning Adjustments as the hearing body; because of the 7 findings, there have not been many garage conversions approved. The first finding is that there needs to be no other alternative for other forms of conforming additions to the property. This was formulated by the Ordinance Committee and the Board of Supervisors adopted the ordinance in this form. It was intended to assure preservation of especially one car garages, and to prevent overflow parking on the street or in the front yard set back, and so finding "A" was adopted. However, because few projects can meet the first finding, we have seen a pairing of the SDR permit with a Variance application from that finding. Thus, we move to the variance findings, and have to also make specific findings for the variance, including special circumstances. Staff has concluded that the design of the project is feasible for the SDR approval. However, we don't find special circumstances on the property and so recommend against the Variance. The Planning Department has several applications pending like this one, and we are in the process of evaluating the original ordinance language and possible clean up to clarify the restrictions and make it more practical without undermining the original intent. In the mean time, the applicant is very interested in pursuing this project, but seems willing to wait for the clarifications. The main question is whether there are no alternative areas on the site for the bedroom addition. It should also be noted that there is currently an accessory structure on the site. Mr. Buckley said that staff recommends denial.

Mr. Frank asked Mr. Buckley what the 7 requirements were. Mr. Buckley said that the other six involve replacement of the parking on site, an internal connection to the main residence, and similar. Mr Frank asked if there was just one matter in question. Mr. Buckley replied, the question is whether there was another location on the site where the addition could be made instead of converting the garage. It seems that there is, since there is an accessory structure and other land already on the site. Mr. Buckley said that staff therefore has to recommend denial of the variance.

Mr. Nielsen asked if the applicant is installing a concrete pad for the parking area. Mr. Buckley said that it can be any all weather surface, but that one of the draft conditions of approval is that the driveway and parking are to be paved with concrete.

Ms. Adesanya asked if the existing lot has access to the rear and what does it serve. Mr. Buckley said that there is a driveway to the one-car garage, which

would be removed, and that there is a second gravel driveway that serves the rear of this property and would be paved to access the new parking. He said that the second page of the staff report has photographs, showing the gravel access driveway.

Mr. Moore asked Mr. Buckley what was the use of the one story auxiliary structure and asked if it was a dwelling unit. Mr. Buckley said he did not believe so. Mr. Moore said that this property was recently subdivided, and during the subdivision an issue came up about the accessory structure, and maybe it could be removed to provide better lay out. That wasn't ultimately required, but one of the comments was that it should not be a dwelling unit. Mr. Buckley said that we are not sure whether is being used that way.

Ms. Adesanya asked if the veranda is the attached porch. Mr. Buckley replied, yes.

Ralph Edward Pettit, owner of the subject property, said that with regards to the definition in the first section of the seven requirements, no other conforming building space, the existing building is arranged so that there is no other area where you can build on to add a conforming second bathroom and a fourth bedroom. Going up on the second floor is not feasible because the foundation would not support a second floor without a lot of investment. Looking at the set backs, everything is where it is supposed to be, with the two areas off to the back occupied by the veranda, and otherwise you would have to go through the kitchen or through the garage to get to a fourth bedroom and bathroom. He was also going to put a deck and a Jacuzzi in the rear, and there is only 11.5 feet from a tree that he would like to keep, so he would have to remove that tree and go through another bedroom, so it defeats the purpose on the floor plan to try to put an extra bedroom and a second bathroom in the dwelling. He has no other alternatives. There is no other conforming building space for the fourth bedroom and a second bathroom.

Public testimony was called for. No public testimony submitted.

Mr. Moore said that the series of rules is aggressive, with item 1 where it says: "any other alternative". He said that the easy way to solve the problem is to give Mr. Pettit what he wants and convert his auxiliary structure into a garage, with the garage in the back, and this way he could have a covered garage.

Mr. Frank said that the intent language of that clause is the problem, and there are ways to go about making it right, which was the ordinance has to be modified, but he would suggest to go ahead with the variance in this case and then go back and change the ordinance for others.

Ms. Miraglia said that the language was put there for a reason. She is a member of the Ordinance Review Committee and they spent a great amount of time, and it is

not by chance that there needs not be no other space for them to add on. Not only with a lot of time spent between the Planning staff and the Review Committee but it also went to other review bodies including the Planning Commission and the Board of Supervisors. Her question was if there is any other space on that property that Mr. Pettit can put a master bedroom.

Mr. Moore said that from the applicant's standpoint, money is an issue here and he has no objection if Mr. Pettit puts a garage in the back, there is plenty of room in the back to go ahead and build a garage or to convert the one story structure that he thinks is not used as dwelling unit, and give him what he wants. He likes the floor plans, he should enjoy the use of his house. It is a new ordinance and is there for a reason, and was reviewed by a lot of people. But Mr. Pettit has several options here.

Ms. Adesanya told Mr. Buckley that in his explanation he talked about the intent in regards to the first criteria, particularly covered garages. Her question is if staff feels that the intent of the criteria # 1 could be met if Mr. Pettit replaces the existing garage with a covered structure or an enclosed garage versus a carport and also if he could read that one criteria.

Mr. Buckley said that the intent includes a whole list of findings in terms of storage, street parking and preservation, and that the intent could be met for the other six, but the first one is in the first priority question, about whether the garage conversion is necessary or if it should be left alone.

Ms. Miraglia said that if this application included a double car garage as part of the application, then the conversion in her opinion could be feasible, but we still have to deal with the findings as they are written.

Mr. Nielsen said that there is no question that behind the garage and to the rear kitchen he can build a master bedroom and that would solve the master bedroom question. The intent of the ordinance was to look at improvements of properties, he agrees with Ms. Miraglia if they built a two car garage it would help, not only for the residents but also for the neighbors. His concern in doing this is that the ordinance needs to be changed first. He really has a problem with this. He said he can not support this.

Mr. Frank asked Mr. Pettit if he considered putting a two-car garage at the back of the site. Mr. Pettit said that he wanted to put in a two car garage but when he came to the Planning Department they said he might be able to avoid the variance issue if he just put a slab down. He wants to put the two car garage, he has a 15 passenger van and his garage is worthless, he can not put any trucks or vans or anything in the existing garage as it stands.

Mr. Moore asked Mr. Pettit where he was thinking of wanting to put a two car garage. Mr. Pettit said that he actually wanted a 3 car garage, to keep his boat off

the street, too. He does not park anything in the street. Mr. Moore asked Mr. Pettit if he would consider converting a part of the one story structure back 20 feet so that the driveway in front of the existing garage could serve the need. If he could make this a little bit bigger detached structure, there would be no need for a variance.

Mr. Frank told Mr. Pettit that he would like to see what he can work out.

Mr. Nielsen asked staff if that would that meet the criteria for the regulation. Mr. Buckley said yes, if the garage was still back 20 feet from the rear property line. Mr. Nielsen said that if the Council approves it, the condition should be for a garage without gravel, but they are not complying with the first part. Mr. Buckley said that trying to restrict things was intended to address the side effects of conversions, and that conditions could address that.

Mr. Moore asked Mr. Buckley if the wording is open for review. After you process this one are you going to go back and do wording amendment to clarify that. Mr. Buckley said that we have been debating the process, in terms of how to involve the Ordinance Review Committee and other advisory bodies. Mr. Moore said that the intent is never to say to go through a variance every time you want to convert a garage if you can come up with an alternative design somewhere else for the replacement garage.

Ms. Miraglia said that we might need to add to finding "A", stating "unless the garage can be located elsewhere on the property."

Mr. Frank commented that the function of this Council is advisory, and not the final say in a matter. The Council has the right to make recommendations to advise to correct the situation.

Ms. Miraglia said that if that is the case, if Mr. Pettit was agreeable to continue the item, the Council can make a recommendation and see if the ordinance could be changed.

Mr. Pettit said that he would be more than happy to go along with the Council's recommendation.

Mr. Moore offered an alternative to Mr. Pettit, such that if he was to continue the hearing, and modify the design, and come back with a design for at least a one car garage on the side or rear, then the Council could grant a variance for the design while is going through the Ordinance Committee.

Mr. Nielsen said that if the Council continues it and give the Ordinance Committee a chance to modify the language, then the item could come back with an approved project.

Ms. Miraglia said that it is not only the Ordinance Review Committee, the Council should make a recommendation and then the Planning Director can do whatever he needs to do, and it will go to the Board of Supervisors. It does not have to go back to the Ordinance Review Committee necessarily.

Mr. Buckley said if we can get a few people to weigh in, it might be sufficient.

Ms. Miraglia said, it does not make sense to not allow a conversion if the garage can be located elsewhere but she thinks that finding A is very important.

Mr. Moore said just to move Mr. Pettit forward, he can come back with a satisfactory design for at least one car just to replace the one car garage that he has, and then the Council could consider granting a variance.

Mr. Frank said the Council can make a motion to advise others as to the changes.

Mr. Nielsen said he is concerned about the language. Ms. Miraglia said to just add to A: “unless fully conforming garage space can be located elsewhere on the property”.

Mr. Buckley said that finding E already addresses conforming on-site replacement according to zoning.

Ms. Adesanya said they could allow for the parking spaces to be uncovered as opposed to an enclosed garage.

Ms. Miraglia added that it should read: “Unless equivalent fully conforming garage space can be provided elsewhere on the site”.

Mr. Frank said that from the perspective of the Brown Act, the Council can not yet make a recommendation on that, but the Council can put it on the next hearing agenda, and we can condition approval based on this specific situation.

Mr. Moore said the Council can not do that, the council can not change the Ordinance, the Council can either continue it, vote in favor or against it. Mr. Pettit is going to offer an equivalent design, but the Council can not approve something that it has not seen. The best thing is for Mr. Pettit to come back in two weeks.

Ms. Miraglia said that if Mr. Pettit comes back and the finding has not been changed by the Board of Supervisors, she will not vote for it.

Mr. Buckley said that we can not recommend approval because the ordinance has not been changed. It would be best to put the overall issue on the next Council agenda for the Ordinance revision and take that forward, and bring projects back for consideration later.

Ms. Adesanya recommended that Mr. Pettit work with staff to make sure that he comes back with a solution that does not need additional variances on rear yard set backs, distances from the household because that is going to set a precedent situation.

- 3. SITE DEVELOPMENT REVIEW, S-2076 – HUDSON** – Application to allow building façade improvements on one parcel containing approximately 0.69 acres, in the “CVCBD-SUB-7” (Castro Valley Central Business District, Sub-Area 7) District, at 3170 Castro Valley Boulevard, north side, approximately 330 feet east of San Miguel Avenue, Castro Valley area of unincorporated Alameda County, bearing County Assessor’s Parcel Number: 084A-0112-013-00. **(Continued to September 25, 2006).**

F. Open Forum – None.

G. Chair’s Report – None.

H. Committee Reports

- **Eden Area Alcohol Policy Committee**
- **Redevelopment Citizens Advisory Committee –.**
- **Castro Valley Parkland Committee**

Mr. Nielsen said that the Castro Valley Park Committee has asked individual members of the MAC to endorse the bond issue.

- **Ordinance Review Committee**

Ms. Miraglia said the committee met and discussed the canopy ordinance. She will send a copy to council members.

I. Staff Announcements, Comments and Reports –

Mr. Swanson said that the Farmers Market has leveled off as the type of market for Castro Valley. They had a good turn out last week. It will sustain the market.

J. Council Announcements, Comments and Reports

K. Adjourn

The meeting was adjourned at 8:25 p.m.

Next Hearing Date: September 11, 2006