

CASTRO VALLEY MUNICIPAL ADVISORY COUNCIL

Minutes for August 27, 2007

(Approved as corrected September 10, 2007)

- A. CALL TO ORDER:** The Chair called the meeting to order at 6:30 p.m. Council members present: Dean Nielsen, Cheryl Miraglia, Carol Sugimura, Andy Frank and Dave Sadoff. Council members excused: Ineda Adesanya, Chair; Jeff Moore, Vice Chair. Staff present: Jana Beatty, Tona Henninger, Bob Swanson and Maria Elena Marquez. There were approximately 15 people in the audience.

B. Approval of Minutes of July 23 and August 13, 2007

Mr. Frank approved the minutes of July 23, 2007 with minor corrections from Ms. Sugimura and Mr. Nielsen. Motion carried 4/1/2 with Ms. Sadoff abstaining and Ma. Adesanya and Mr. Moore excused.

Ms. Miraglia moved to approve the minutes of August 13, 2007 with minor corrections. Motion carried 4/1/2 with Mr. Frank abstaining and Ms. Adesanya and Mr. Moore excused.

- C. PUBLIC ANNOUNCEMENTS – None.**

D. Consent Calendar –

- 1. Continued discussion and action related to an encroachment permit application for the property located at 4746 Ewing Road, Castro Valley, CA 94546 – Art Carrera, Public Works.**

Mr. Nielsen said that the decision from the Council is to delay this item until the Council has full information for a decision and an opinion from County Counsel as far as access.

Ms. Miraglia asked if the Council can do one motion to take it off the Consent Calendar and continue it.

Ms. Henninger told Ms. Miraglia that there are two options: move it to the September 10 agenda, or move it to the regular calendar and open it up to public comment, knowing that there will be no action taken. Ms. Miraglia made a motion to take it off from the consent calendar to the regular calendar. Motion carried. Mr. Frank seconded. Motion carried 5/0. No action will be taken tonight.

E. Regular Calendar

- 1. Continued discussion and action related to an encroachment permit application for the property located at 4746 Ewing Road, Castro Valley, CA 94546 – Art Carrera, Public Works.**

Public testimony was called for.

Jim, a Mira Vista Dr. resident, said that he was not notified about the issue.

Mr. Nielsen said that is one of the reasons this item needs to be on the agenda correctly so there is no misunderstanding on what the Council is discussing and we will get all the information from Public Works and County Counsel.

Ms. Henninger said that this item was heard at the August 13 meeting; it was a lengthy discussion at that time. Then it was advised to continue it to get proper noticing. There was no public notice on Mira Vista Dr. or Ewing. There was additional information that staff does not have related to petitions that were signed. It will be continued again to September 10, 2007 when we will have all the information and the neighbors will be notified of the meeting.

Nancy Villarreal, resident at 17060 High Pine Way, said they have a lot on the back of the property. They live 5 houses from the Crocketts. She said they were not notified originally about the first hearing. It is critical for the residents to be informed. She asked how she can receive a copy of the staff report that will be issued prior to the meeting to be able to review it. She asked if it will be on line. Ms. Henninger said no.

Harold Sullivant, resident at 4740 Mira Vista Drive, said that at the previous meeting most of the things regarding retaining the barricade in Mira Vista Dr. were discussed. He referred to a letter from Public Works dated December 14, 2006. The letter was entered into the record.

Kristina W. Doomein, resident at 4750 Ewing, said that the barrier is placed on the back of her property. She has lived in her house since 1991 and the property has been in the same state since then. She is concerned about the safety because there is no accessibility. She is also concerned that a barrier may impede the use of the property. Having a barn and open space makes the neighborhood unique and more friendly.

Ms. Miraglia made a motion to continue this item to the September 10, 2007 meeting. Mr. Frank seconded. Motion carried 5/0/2 with Mr. Moore and Ms. Adesanya excused.

2. **VARIANCE, V-11982, PATRICK LOVE** - Application to retain a converted one-car garage thereby eliminating the required on-site parking space where otherwise not permitted in a R-1-CSU-RV (Single Family Residence, Conditionally Permitted Secondary Unit, Recreational Vehicle) District located at 3773 Cottage Court, north side, approximately 284 feet west of Parsons Avenue, in the unincorporated Castro Valley area of Alameda County, bearing Assessor's Parcel designation: 84D-1329-017-00. **(Continued to September 10, 2007).**

3. **VARIANCE, V-12078 - TIM and HELEN NGUYEN** – Application to allow construction of an attached addition encroaching ten feet into a Special Building Line of 20 feet, in a R-1-CSU-RV (Single Family Residence, Conditional Secondary Unit, Recreational Vehicle) District, located at 3694 Quail Avenue, west side, corner south of Seven Hills Road, unincorporated Castro Valley area of Alameda County, bearing Assessor's Parcel Number: 084D-1300-001-21.

Ms. Beatty presented the staff report. Staff is recommending approval of the application. She noted that on page 3 of the staff report, under pre-hearing recommendation, what we commonly do for conditions of approval for variances into special building line or future width line is to state what is at the risk for the applicant. If Public Works ever choose to implement such a thing is at the risk to the property owner. She would recommend that be added to the recommending conditions.

Mr. Sadoff asked Mr. Beatty what was the purpose of the special building line. Ms. Beatty said it could be similar to a future width line which would be potential street widening. Special building line would be put in by Public Works for street improvements, could be public infrastructures that Public Works might need in the future.

Ms. Miraglia asked Ms. Beatty if she had any information on retaining walls.

Richard Atthome, representing the applicant, said that as far as the retaining walls, there are some existing walls that will be taken down. There will be 4 feet concrete block retaining walls.

Ms. Miraglia asked Mr. Atthome if there will be landscape in front of the retaining wall. Mr. Atthome said it will be behind it. Ms. Miraglia asked if people are going to be seeing the retaining wall. Mr. Atthome said that there is a 6 foot fence. The house can not be seen.

Public testimony was called for. No public testimony submitted.

Ms. Miraglia moved to approve Variance, V-12078 with staff recommendations and add a condition regarding the Special Building Line. Ms. Sugimura seconded. Motion carried 5/0/2 with Mr. Moore and Ms. Adesanya excused.

4. **SITE DEVELOPMENT REVIEW, S-2059 – HUMMER** - Application to retain a converted one-car garage without permit so as to locate one required on-site parking space in front of the converted garage on the 52 foot long driveway in a R-1-CSU-RV (Single Family Residence, Conditionally Permitted Secondary Unit, Recreational Vehicle) District located at 3765 Cottage Court, north side,

approximately 284 feet west of Parsons Avenue, in the unincorporated Castro Valley area of Alameda County, bearing Assessor's Parcel designation: 84D-1329-016-00.

Ms. Beatty presented the staff report. She stated that staff believes that the applicant was able to meet all the findings which include providing ultimate parking to replace the parking that is taken away from the converted garage. If the applicant was not able to make all these findings then he will be required to go through with the variance process requirements. Staff is recommending approval of the application. The conditions of approval are outlined in page 5 of the staff report.

Ms. Miraglia said that she does not understand the requirement to change the garage door. She asked if there was a reason for that. Ms. Beatty said that it was not functional anymore. They are formally taking out the garage space. Ms. Miraglia said that it could look nicer if they put the landscape strip in front of it.

Mr. Frank said that it usually matters in relation to the Building Code, perhaps for proper windows. That has to be taken into consideration. Ms. Beatty said that garages are not considered habitable space.

Mr. Nielsen asked that if it is approved, if they have to meet Title 24 as far as windows and sound and so on. Ms. Beatty said that depending on what type of space goes in there, a bedroom for instance. Mr. Nielsen said that a garage door like this as far as habitable room could be the reason why they want a window put in there. Ms. Beatty told him that Planning is thinking of aesthetics.

Mr. Sadoff said that the staff report mentions that the applicant has provided the east side neighbor with a 5 foot parking easement on his property which is revocable by either owner. He asked if it were revoked would it adversely impact this site development review. Ms. Beatty said no, that was in relation to the previous application that was continued.

Mr. Nielsen said that with this application the findings were that they do have parking without an easement because they can park a car in front of the garage and not encroach the 20 foot set back and the parcel next door is the question with a temporary easement.

Public testimony was called for. No public testimony submitted.

Denise Hummer, applicant, said that the garage door is not a door. In the staff report it says it is the original garage door; it is a façade. She thinks that a window does not look good. There are 3 exterior walls, 2 of the 3 have windows plus the back door has a window, so there is plenty of sunshine coming into that room. In regards to landscape, it would take away from their level parking so they park very close to the actual wall. She has lots of landscaping in the front of the

home. Regarding storage, she knows that it is in the regulation but she said it is a one car garage, not a two car garage. It was noted in the report that she has storage above the garage.

Mr. Nielsen asked Ms. Beatty if the 800 square feet of storage was a requirement for the findings. Ms. Beatty said yes. Ms. Hummer said that that should be taken into consideration.

Ms. Henninger said that according to the ordinance, it is a requirement and the finding is not optional.

Ms. Hummer said she knows it is not optional, she asked to take that into consideration. They did research and 800 cubic feet is quite a large shed, it could be bigger than 10 x 12, it does not maintain the usability in their back yard. Mr. Hummer asked if 800 cubic feet is for a two car garage conversion or for a one car garage conversion.

Mr. Frank said that it is a reasonable approach because typically a one car garage is going to be 11 x 20, 12x 20 or 12x22. Mr. Frank asked Ms. Hummer how much storage she has in there. Ms. Hummer said 5 to 6 feet.

Ms. Henninger said the issue of storage space was a very lengthy discussion at the committee level and there was much concern about storing outside, storing in the back yard or the front yard. Mr. Nielsen asked if the Board of Supervisors specified if they can have the required cubic feet in storage space at another location on the site. Ms. Henninger said she thinks it was not specified. Mr. Nielsen said if it is 8 feet high which is a legal height ceiling in the garage. Ms. Henninger said that you may be able to use whatever space you have as part of the calculation. Mr. Hummer said that their usable space in their back yard is very limited.

Mr. Nielsen said that the restriction that the Council is facing is that the Ordinance says 800 cubic feet. The point is if it can be worked out with the Building Department whether they comply with it or not as far as the conversion itself. Ms. Henninger said the Planning Department has its Ordinance for the code requirements since it has been changed to habitable space.

Public testimony was called for. No public testimony submitted.

Mr. Frank said that he agrees with the applicant in terms of the landscaping. He has seen different homes with garage conversions both with approval and those without approval and many of them do not have landscaping in front of the garage. He would like to see that eliminated, as far as the County considerations because it can cause problems with drainage and dry rot. He agrees with all the County considerations except for the landscaping.

Ms. Sugimura said that it looks like a garage but is not a garage. She would prefer that it looked like part of the house. They have plenty of parking in the front.

Mr. Frank said that in the future there will be issues with dry wall termites.

Mr. Sadoff and Mr. Nielsen have no issue with keeping it as it is. Landscaping is not an issue for them. Mr. Nielsen is concerned that the conversion conforms to Title 24.

Mr. Frank moved to approve Side Development Review, S-2059 with Planning considerations with the exception of landscaping. Mr. Sadoff seconded. Motion carried 4/1/2 with Ms. Miraglia opposed and Mr. Moore and Ms. Adesanya excused.

5. **DEVELOPMENT REVIEW, S-2109 – DINH NGUYEN** - Application to allow placement of a storage container in the parking lot, in a CVCBD Specific Plan Sub-3 (Castro Valley Central Business District Specific Plan) District, located at 2644 Castro Valley Blvd., north side 133 feet west of Park Way, in the unincorporated Castro Valley area of Alameda County, bearing Assessor's designation: 084A-0181-069-00.

Ms. Beatty presented the staff report. She stated that Code Enforcement staff noted that this application came as a complaint. Staff feels that the placement of the storage container is going to detrimentally impact the parking and the neighborhood. Staff is recommending denial.

Ms. Sugimura asked Ms. Beatty about the other parking spaces available within the lot. She said the purpose is to maximize shared parking because businesses are open at different hours. She thought that this was open space altogether.

Ms. Henninger said that according to the site plan, there is no wire fence on the side of the storage container. She thinks it is not open space.

Council members and applicant ensued in a discussion regarding the size of the container.

Mr. Frank asked Ms. Beatty if it is open and if we are trying to get open parking for everyone.

Mr. Nielsen said that before the Council can make the assumption that there is parking for everyone, they would have to have a parking district agreement.

Ms. Beatty said that the applicant has provided a parking agreement with the adjacent owner. Mr. Nielsen said that because of different business parking

requirements, the point is if four parking spaces are taken out from the equation that impacts both businesses.

Mr. Frank asked if the County has done any calculations if there is a parking district agreement if there is sufficient area for back up. Ms. Beatty said no. Ms. Henninger said that this agreement was as a condition of approving the restaurant. Mr. Frank said that the Council might want to consider continuing the matter subject to the party getting a parking district agreement with the adjoining land owner and concurring with the County to determine the parking.

Ms. Henninger said it is very compact with the number of businesses located in there. There is a proposed new restaurant as well.

Mr. Nielsen said that part of the problem is that because one parking district agreement in downtown Castro Valley many months ago and it was not successful. He would hate to hold up a decision on this based on several months trying to reach a parking agreement. Ms. Henninger said that under response to referrals in the staff report, the Fire Department and Public Works are recommending denial due to many code violations that exist next to the property line.

Mr. Frank said that there are containers 10 x 10 and 10 x 20. Ms. Henninger said that Code Enforcement in general has issues with containers. Other agencies have as well.

Dinh Nguyen, applicant and owner, said that he thinks that the container should not be removed. The container has been there for 20 or 30 years. Also, there was a container next to his container before. He bought the building 3 years ago and paid the price of the building including the container. The report says that the container is taking 4 spaces from the parking. The picture shows that with 3 big cars parked next to the container they still have space. He said that his customers park on the front of Castro Valley Blvd., they never go to the back. He said they do not have customers all day long. Customers come at a different times. He said that they need the container to store furniture. He asked the Council to approve his application.

Mr. Sadoff asked Mr. Nguyen what does he store in the container. Mr. Nguyen said just furniture.

Mr. Frank asked Ms. Beatty what was the policy 30 years ago.

Ms. Sugimura asked if there are any problems in terms of complaints like vandalism with the container at the back. Ms. Henninger said that it came to Code Enforcement as a complaint.

Public testimony was called for. No public testimony submitted.

Mr. Sadoff said that he feels bad for Mr. Nguyen because it seems that the container is an important portion for the owner's ability to conduct business but public safety has to be considered.

Ms. Miraglia agreed with Mr. Sadoff. She knows that storage is at a premium and the cost is high to store somewhere else, but safety and aesthetics need to be considered. She is not in favor.

Mr. Frank said that graffiti does not necessarily turn up on containers. The County has a policy providing administrative approval for containers in parking on site if they meet the parking requirements. The issue here is that it does not meet the parking requirements. Mr. Frank said the question is the location, the proximity to the main structure and why they put it in there. He would like to see verification of how long it has been there. He does not know of any major problems. It is the first time that this comes as an issue before the Council and why suddenly this is an issue.

Mr. Nielsen said that this is the first time it caught the Council's attention. By approving this one, the Council sets a precedent.

Ms. Sugimura said that personally she does not like the look of the storage unit in the parking lot. Her concern is about safety. She would like confirmation of how long that container has been there.

Mr. Sadoff said that this recently came to the attention of the Fire Department and they say is not acceptable at this location. It is a safety issue.

Ms. Miraglia moved to deny Site Development Review, S-2109. Mr. Sadoff seconded. Motion carried 3/2/2 with Ms. Sugimura and Mr. Frank opposed and Mr. Moore and Ms. Adesanya excused.

Mr. Nguyen said that the reason why Alameda County filed the container problem was because he tried to help his adjacent neighbor with the parking, he said he could not run the business because he does not have enough parking so he asked him if he could share his parking and he agreed.

F. Open Forum

Debra Butler, resident at 2205 167th Avenue and member of El Portal Ridge Community Association, asked if this area which is now part of the Castro Valley General Plan, if MAC has authority over El Portal Ridge area.

Mr. Swanson told Ms. Butler that the existing boundary is currently in Castro Valley, it was actually never out of it. Mr. Nielsen said that it would not change until the Board of Supervisors vote. Ms. Henninger said she is not sure if that

includes all of El Portal Ridge and if it comes directly to MAC. Mr. Nielsen said only the 1985 boundary. The area in question north of El Portal that would take Board of Supervisor action. Mr. Nielsen told Ms. Butler that this Council can hear items from El Portal Ridge.

Nancy Dobbie, resident at 5599 Greenridge Road, stated that she took advantage of the housing rehabilitation loan program for low income senior citizens. She thinks it is a great program. She was told that they (Housing and Community Development Agency) would guide her through out the process, oversee the work and inspect the work. She wanted to make sure that the job was done well. She did everything that they required. None of that happened. Nobody supervised the work, she called the agency and the contractor. At the beginning, the driveway looked beautiful. Three weeks later she had cracks on the driveway. The contractor told her that it was just the way it goes. When she came to sign the papers for the release of the funds, they told her that it was hard to prove workmanship. She trusted the agency, checked industry standards and she found out that they did not conform to either county specifications or industry standards. She went to different organizations and found out that they have the same standard for a 6 foot slab inch and a half scoring, very important to prevent cracking. Carl Gardeman, HCD manager, didn't seem to know anything about specifications. They insinuated that she was a litigious person. It is a County wide problem. She just wants to know where she can go from here with this problem.

Ms. Henninger asked Ms. Dobbie if she had a written statement. Ms. Dobbie said yes. Ms. Henninger told her that she will go and check with Mr. Gardeman.

Mr. Nielsen asked Ms. Henninger to give the Council a report whether it has been solved or if it is a community problem.

G. Chair's Report – None.

H. Committee Reports

- **Eden Area Alcohol Policy Committee**
- **Redevelopment Citizens Advisory Committee**
- **Ordinance Review Committee**
- **Eden Area Livability Initiative**

I. Staff Announcements, Comments and Reports

J. Council Announcements, Comments and Reports

Ms. Miraglia asked Ms. Henninger who owns the property at the corner of Center and Castro Valley Blvd. where Caltrans has an ugly lot there. In front of the lot there is a cyclone fence, there are a bunch of weeds. She wanted to know if it is all Caltrans. Ms. Henninger said yes.

Mr. Sadoff asked about the 238/580 interchange, it looks like it is slowing down and if there are any news about what we can expect up there in the foreseeable future. Mr. Frank said that sometimes Caltrans has specific requirements with concrete and it has a lot to do with the weather.

Ms. Miraglia asked about the item on the tower on PGE property. Someone was going to call PG&E about the landscaping. She asked if anything has happened. Ms. Henninger told Ms. Miraglia that she contacted PG&E but she has not heard anything. She will check with staff.

Ms. Sugimura asked if both Taco Bell and Capers were going to be remodeled. Ms. Miraglia said that Capers was supposed to be a remodel. That is how it came to MAC. Taco Bell was supposed to be remodeled but now all the building is gone. Ms. Sugimura asked what was the definition of a remodel. Mr. Nielsen also said that one of the concerns the Council has with Safeway are the corporate colors. He talked to several individuals that work there. There is different building design criteria for the east, west coast and cities in California.

A discussion ensued among Council members regarding the Montessori School.

K. Adjourn

The meeting was adjourned at 8:01. p.m.

Next Hearing Date: Monday, September 10, 2007