

**CASTRO VALLEY MUNICIPAL ADVISORY COUNCIL**

**Minutes for October 22, 2007**

(Approved November 13, 2007 as corrected)

- A. CALL TO ORDER:** The Chair called the meeting to order at 6:35 p.m. Council members present: Jeff Moore, Chair; Cheryl Miraglia, Vice Chair. Council members: Andy Frank, Dean Nielsen, Carol Sugimura and Dave Sadoff. Council members excused: none. Staff present: Jana Beatty, Bob Swanson and Maria Elena Marquez. There were approximately 30 people in the audience.

**B. Approval of Minutes of September 24 and October 8, 2007**

Ms. Sugimura submitted minor changes. Ms. Miraglia moved to approve the minutes of September 24, 2007 as corrected. Mr. Sadoff seconded. Motion carried 5/1 with Mr. Moore abstaining.

Ms. Miraglia requested a copy of the audio of the October 8, 2007 minutes. Item 2, she requested clarification on the motion. She said she voted on this motion because of the verbiage regarding the parking. Ms. Beatty told her that she listened to the audio which is a little confusing. She said that the intent of the Council was to not approve any uses in that building that would require additional parking because of the constraints on the site. She met with Redevelopment this morning to go over their concerns about the parking. Redevelopment was at the hearing that night, and at the time they did not have information about the parking agreement. Ms. Miraglia asked Mr. Nielsen to propose verbiage or she will listen to the audio. Mr. Nielsen suggested to continue the approval of this minutes until the Council gets clarification. This is a very important issue. Mr. Nielsen said he will write out the change in the minutes and then submit them.

**Mr. Frank moved to approve continuance of the minutes of October 8. Mr. Nielsen seconded. Motion carried 6/0.**

**C. PUBLIC ANNOUNCEMENTS – None.**

**D. Consent Calendar - Variance, V-12061 was moved to the Regular Calendar.**

**E. Regular Calendar**

- 1. VARIANCE, V-12061 – SEAD SISIC -** Application to allow a 6' high fence where 4' is the maximum and to allow an accessory structure in the front half of the lot in an "R-1-CSU-RV" (Single Family Residence, Conditional Secondary Unit, Recreational Vehicle) District, located at 18658 Crest Avenue, northeast side, 440 feet northwest of Titan Way, in the unincorporated Castro Valley area of Alameda County, and designated Assessor's Parcel Number: 084B-0370-007-13 **(Continued from October 8, 2007)**

Ms. Beatty presented the staff report. She said that this item was heard in May, 2007. The project was continued so staff could talk with Public Works Traffic Division in regards to safety concerns about cars exiting on the private driveway that is adjacent to the property. The variance is for the retention of a 6 foot high fence as well as an accessory structure in the front yard. At this point, staff does not have an ultimate recommendation for removing that fence.

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Sead Sisic, applicant, said that since the last time he was before this Council he asked a question for variance and did not get an answer. He asked if it was true for everyone or only for him. He said he has 4 feet from inside and 6 feet from outside. He showed some color pictures to council members. Mr. Frank directed Mr. Sisic to contact Tona Henninger, Code Enforcement so they can investigate that.

Mr. Nielsen told Mr. Sisic that he does not know if those photos were taken somewhere else other than Castro Valley. Mr. Nielsen asked Mr. Sisic why he continued to improve the front of his property when the fence was in question. Mr. Sisic asked why he can not get a permit.

Mr. Frank told Mr. Sisic to allow staff to answer the questions for him. He told Mr. Sisic to ask singular questions so staff can start answering.

Discussion ensued regarding fencing on top of a retaining wall, and Mr. Moore suggested that a code violation could occur from a railing standpoint. If his fence were open and you can see through it, i.e. if he has a 6 foot wrought iron fence with 6 inch or 4 inch width fencing, would that technically solve his problem. Ms. Beatty said that a variance would still be necessary, but the sight-line issues potentially go away.

Mr. Nielsen said that in order for Mr. Sisic to put a 6 foot high fence, how far away from the property line would he have to move the fence. Ms. Beatty said 20 feet. Mr. Nielsen said if you look at 20 feet, he has probably another 15 feet to the edge of the pool. If a 4 foot fence were put at the property line, he can put a 6 foot fence 20 feet back and still have plenty of area as far as the pool and as far as parking view of the parking area would not be a safety issue. That would be one alternative in order to solve the problem. Ms. Beatty said that is correct, although the variance is also for the rest area.

Mr. Moore said that findings must be made in order to grant the variance.

Public testimony was called for. No public testimony submitted.

Ms. Miraglia said that when this item was discussed in May the sight issue was the biggest issue. The Council spent a lot of time talking about what could be done. At the time she suggested moving the fence back in line with the gazebo. The way it ended up was to allow Mr. Sisic to come back with a design that would solve those issues. Instead, he came back with the same plan, there has been no change. The safety issue still remains the same. Ms. Miraglia said that she can not grant the variance.

Mr. Sadoff said he would be willing to work with the applicant but according to the staff report, the applicant is not willing to accept those alternatives. The Council is looking for an idea from him to overcome the safety issues.

Ms. Sugimura said that one of the options in fact could be a wrought iron fence you can see through - traffic coming out would be more visible. She asked Mr. Sisic if he was willing to consider that. Mr. Moore asked Mr. Sisic if he was willing to look at alternatives.

Mr. Nielsen said that since this item first came by, he has been by the site 4 times. He noticed that Mr. Sisic continued working in the front yard improvements. It is not that the

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Council is arbitrary about its recommendations. The Council is concerned about the health and safety of him (Sisic) and the neighbors. He does not know if the fence was there when he purchased the property and if a permit was obtained. Ms. Beatty said that there was no permit. He can not support the variance based on what is going on.

Mr. Sisic said that the fence needs to be 6 feet for his privacy. Mr. Nielsen asked Mr. Sisic if he was willing to put up a wrought iron fence in front with a 6 foot fence 20 feet back. Mr. Sisic said he has 2 feet inside. Mr. Frank told Mr. Sisic to make appropriate changes as suggested and to comply with the requirements as requested

Mr. Moore said that he would support the variance with the 6 foot fence if the gazebo were to be moved.

**Ms. Miraglia moved to deny Variance, V-12061. Mr. Nielsen seconded. Motion carried 6/0.**

2. **SITE DEVELOPMENT REVIEW, S-2133, LEE'S SIGNS/FINK** Application to allow new signage for a restaurant, in the Castro Valley Central Business District Specific Plan Sub-area 10 (CVCBDSP-SUB 10) District located at 3774 Castro Valley Boulevard, north side, approximately 250 feet west of Forest Avenue, Unincorporated Castro Valley Area of Alameda County, designated Assessor's Parcel Number 084C-0724-068-00. **(Continued from October 8, 2007)**

Ms. Beatty presented the staff report. This item was before the Council on October 8, 2007. She said that the applicant has been able to speak with the property owner. Staff spoke with the Building Department to go out and make an inspection of the site. The property owner is willing to paint the exterior of the building. The Building Inspection inspector looked at the porch structure that comes out from the façade of the building and feels that it is not strong enough to support the sign, but we did find one spot that will be able to support the sign. He also did write up some other violations that he found and need to be corrected. The property owner can tell what renovations can be made.

Public testimony was called for.

Christine Nava, resident at 2224 Camino Dolores and daughter of the property owner, said that she is requesting approval to allow the sign to be installed so the present owner can complete the transaction to the new owner so he can open up the restaurant. She will meet with Scott Owen to go over these items and take care of the repairs. She is also in communication with Stacey Sorensen and will be working with the Building Department to get these items corrected but she is asking that the sign be approved.

Ms. Miraglia asked Ms. Nava if it was a new owner or a new tenant. Ms. Nava said that the existing tenant is selling his restaurant to another new owner. She said that her father bought the building in 1980 and it has always been a restaurant.

Mr. Nielsen said if the Council approves the new owner, the improvements must be done before the restaurant opens. He asked Ms. Nava if she would agree with that restriction. Ms. Nava said it would be up to the new owner. Mr. Nielsen said that the Council needs the issues to be resolved before the new owner opens the restaurant.

Mr. Sadoff asked Ms. Nava how long she expected the repairs would take. Ms. Nava said she will go to the Building Department to apply for the building permit. One of the items has been taken care of, it was the issue of electrical to the shed structure.

Mr. Moore asked Ms. Nava if she had discussed with staff the landscaping, fence repair and code violations issues. Ms. Nava said that would be up to the restaurant owner.

Public testimony was called for. No public testimony submitted.

Mr. Sadoff and Ms. Sugimura concurred with Mr. Nielsen's thought on this as long as the Building Inspection items are taken care of prior to the opening of the restaurant.

Ms. Miraglia said that she would like to see the fence painted and landscaping installed.

**Mr. Nielsen moved to approve Site Development Review, S-2133 with the restriction that the restaurant not be open until repairs have been completed, the building and fencing painted, and a landscaping plan submitted to the County. Mr. Frank seconded. Motion carried 6/0.**

2. **TENTATIVE PARCEL MAP, PM-9236 / BOUNDARY ADJUSTMENT – BA-15-07 / VARIANCE, V-12071 – BRIAN LESEUR** - Application to subdivide one parcel containing 0.37 acres into two lots, with a Boundary Adjustment, and allow a 16' front yard setback where 20' is required on Parcel 1 and a 0' street side yard setback where 10' is required on Parcel 2, in a R-1-CSU-RV (Single Family Residence, conditional Secondary Unit, Recreational Vehicle) District, located at 19223 Carlton Avenue, Castro Valley area of unincorporated Alameda County, bearing County Assessor's designation: 084B-0441-043-00.

Ms. Beatty presented the staff report. This application is the result of a settlement agreement between the family members who own this property. If this subdivision is denied, the other option is to make one family member adjoining tenant of the subject property. Staff has been able to make affirmative findings for the variance request. There is no new construction proposed.

Mr. Sadoff referred to the Fire Department response referencing water sprinkler existing systems and class A rated roofing and asked if this is for the existing structures. Ms. Beatty said all structures are existing on the site. Mr. Sadoff asked if that actually exists now or that is an improvement as a condition of the variance. Ms. Beatty said usually when they feel that they have adequate access or if they feel they can get down that driveway they would not require the sprinklers. But if a driveway is long enough and houses are too great a distance from the nearest fire hydrant, they would impose such conditions.

Richard Uribe, representing Marilyn Lesur, mother of the applicant. He said this is a family dispute. Brian Lesur was named as the sole owner of the property. Marilyn Lesur's name was on the property originally but not anymore, that is why the mediation was recommended to subdivide this and put Marilyn's name on the property. She would like to have her own property back.

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Mr. Moore told Mr. Uribe that the Council normally does not hear items without the applicant being present. Mr. Moore said the Council will not take any action. Ms. Beatty said that the Council actually can take action, it's the Council's choice, but classically MAC does not do that.

Mr. Sadoff said that if the applicant is precluded by a separate agreement, the Council might need to take action.

Mr. Frank said that the Council can take testimony. The Council refers the documents to County Counsel for an opinion to bring it back at a future meeting to give the Council direction. In case the applicant does not show up, the Council can proceed with the issue. Mr. Nielsen agreed. Mr. Moore recommended to go ahead and listen to the public testimony and after that the Council will make a decision on how to proceed.

Public testimony was called for.

Dan Grimes, resident at 19221 Carlton Avenue, said that the lot to be subdivided is currently a single family residence with a secondary mother-in-law unit approved by MAC and the Planning Commission in 1991. He read a letter with a detailed description related to the property. The letter was entered into the record.

Carolyn Taylor, resident at 19194 Carlton Avenue, said that she concurs with Mr. Grimes (the previous speaker) and what he said makes a great deal of sense to her.

Richard Uribe, representing Marilyn Lesur, referred to a comment made about dividing the property originally to be equal, their intent never was to divide the property into 3 parcels. Their intent was to divide them into 2 as they are now with the mother-in-law unit there but because of the legal issue that arose, it became necessary for Marilyn to get property ownership and that is what has brought about this application for subdivision.

Todd Finlay, resident at 19953 Forest Avenue, spoke about the human aspect of this situation. He said Ms. Lesur thought she was going to be in ownership of her part of the land and did not pay attention to details about what was happening because she was going in with her son, she figured this was a safe thing. She wants to own her own land and have that security. It is within reason given the existing situation for the Council to approve this application.

David Taylor, resident at 2836 Aegean Place, said why not simply move the mother-in-law unit from the one owner to the new owner of the larger home then the issue would be pretty much resolved. There are enough variances already on this property.

Monica Schmid, resident at 19214 Carlton Avenue, said she is strongly opposed to granting the variance. There are too many variances on it now, house # 2 is higher than what it is supposed to be, there was a variance obtained for that. The driveway is not according to standards, it should be wider than what it really is. She also understands Mr. Uribe and Mr. Finlay said that it is because the mother wants to control her own property. As far as she knows, the mother is living in a retirement home.

Hollis Lesur, owner of the back property, said that there is a variance on that property for height and it was never used. The variance on the mother's property as to allow the

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building in the first place as far as Fire Marshall, Bob Bohman has been up to the property numerous times and she would have to have her house sprinkled. It is 14 feet right where the meter is where his garage is 20 or 30 feet. He is absolutely fine with access allowed. As far as dividing the property, taking property from hers, taking property from her brothers and making hers more equal square footage, the lot itself. She gets the fire truck turn around on her property which serves her, it could not be a separate property without the fire truck turn around because of how many feet it is off. She can not push her line anymore because that encroaches on that fire truck turn around and her property is on a steeper grade. The fire truck turn around is her entire front yard which services her property as well and that was part of Bob Bohman's condition. She would not pursue this if he had not assured her when he signed off on that. She finally said that there are a lot of inconsistencies, too many to address.

Mr. Moore told Ms. Lesur if she moved the property line to split the difference and write an easement to protect that, you do not push the property line. Hollis Lesur said as far as adjusting the property line, her way may have adjusted it as the driveway past her mom's house because you are making a turn into the fire truck turn around.

Mr. Moore said that it can be a condition with easements. Trying to understand whether or not if you do not want to move it closer to your house for whatever reason if there was a way to adjust the area of Parcel 1. If you can move it within 20 feet of your house, he asked her if she would if she could. The fire truck turn around would be half and half. It would serve everybody. Mr. Nielsen said that it would make parcel 1 more conform with the neighborhood as far as lot size consistency.

Hollis Lesur said that she would be willing to do some of that, it would have to go on the other end too because basically there is a lot of room. Her mom's house is pushed very far back up the street, she has her backyard, and then you go right up the slope we have to have engineered for the fire truck.

Richard Martin, resident at 19411 Carlton Avenue, gave a brief history of the property, the families of the surrounding properties and how they get to develop them. He asked why Brian Leseur is not here tonight and he thinks that is for legal reasons. He is not sure why the boundary is needed, all he knows is that since Brian Leseur moved in, something was going on. In conclusion: he would like to know why this property line is needed and he would like assurances that it will not be further developed.

Public testimony closed.

Mr. Moore said that maybe the Council can comment in general and discuss it. The Council can continue deliberations until a later date so we do not have to reopen the public hearing and make a decision. Maybe the Council can formalize the record and find out whether it is a lot size consistency issue and get a general consensus on how the Council feels on that.

Mr. Frank said that a number of developers have come before the Council with similar situations. What the Council is trying to do is to maintain some formal consistency. He said that there are too many variances. The variance issue with the lots as they are right now, the Council would deny it.

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Mr. Nielsen agreed with Mr. Frank. He said that it seemed that because the one driveway is reserved for the parcel in the back, square footage could be gained if joint agreement as far as the access is concerned footage for parcel # 1, the parcels could be more consistent with the neighborhood. As far as the variance on the front house, the Council have considered in the past, lot split or the action that the applicant is requiring. Before finalizing a decision on this, the Council needs to see a copy of the original agreement, because there have been conditions. Without verification of the actual original document, he is not in a position to make a decision either against or in favor of the variance and the split.

Ms. Miraglia said that the main issue is lot size consistency. As far as the settlement agreement it sounds like if in order to accommodate the subdivision there needs to be minor adjustments to the boundary line, she asked if it would be possible to go ahead and renegotiate that lot is bigger currently proposed.

Ms. Sugimura said that she would like to see more lot size consistency but she also noted in the staff analysis on page 6 that there were several really large lot sizes that she was surprised were within the table when they did the averages because typically if they are that large they are not included. If there is going to be adjustment on parcel # 1 as well that would be helpful because they would be more aligned and more consistent with the other ones. She does not have a problem with the variance.

Mr. Sadoff said he is also concerned about the lot size consistency. There is always the possibility of replacing the accessory structure with another large structure. He also would like to see the Fire Department conditions stated so the Council can see what their concerns are.

Mr. Moore said that the lot size is the biggest issue. The variance findings can be made given the fact of multiple examples of similar situations. The consensus is that the Council is going to make a motion for continuance with the fact that we have to ask the applicant to consider modifying the property lines to make lot size consistency more in order of compliance and bring it back. Their map will have to be modified.

Mr. Nielsen said if the Council can see the original agreement rather than the one that has been modified, if that is consistent with what the Council is talking about, along with changing the map, then it should not be a problem. Ms. Beatty said that in lieu of that, if the applicant were to submit a statement authorizing a certain person as his representative.

**Ms. Miraglia moved to continue Tentative Parcel Map, PM-9236, Boundary Adjustment, BA-15-07 & Variance, V-12071 with the aforementioned purpose of having the applicant work out a different solution more in compliance with lot size consistency and a representative of the applicant to be here if not the applicant himself. Ms. Sugimura seconded. Motion carried 6/0.**

3. **CONDITIONAL USE PERMIT, C-8639 - SERVING COMMUNITY CHURCH / LEE** – Application to allow the operation of a church in the PD (Planned Development, 1779th Zoning Unit) District, located at 18911 and 18919 Lake Chabot Road, approximately 234 feet northeast of Keith Avenue, Castro Valley area of unincorporated

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Alameda County, bearing Assessor's Parcel Numbers: 084B-0502-045, 084B-0502-055, and 084B-0502-046.

Ms. Beatty presented the staff report. She stated that she has received comments from the Traffic Division. This application was actually submitted quite a few months ago, the applicant has been patiently waiting for the comments from the Traffic Division. Staff is not making a recommendation at this point mostly because of the issues that the Traffic Division has with the project. Just today staff received comments from the Chamber of Commerce recommending denial. They would like to see that site remain retail.

Mr. Nielsen asked if the exit on Huber was for emergency only. Ms. Beatty said it was for egress only. No cars should be entering the site from Huber. Right now there are two existing entrances on Lake Chabot, and one entrance proposed.

Mr. Moore asked Ms. Beatty about the allowed use of a church in this proposed zoning. Ms. Beatty said that the church had applied for a conditional use permit.

Clifford Kim, member and Deacon of the church, talked about when the church was founded, its current membership and its supporting mission groups. He said that at their current facility in Hayward they serve the homeless once a year providing warm meals to their nearby neighbors, at the same time they serve senior citizens in the neighborhood. They do a lot of good to the Hayward community. The church was founded in 1979. In 1992 the church moved to its current location in Hayward where they are currently leasing. They share the site with 4 other congregations. The total membership is about 105. They have a small membership but expect to grow its membership in the new facility. The supporting mission groups are from several countries around the world. Regarding parking, he said that they will not park outside. They have enough parking spaces to accommodate their members. They have 3 vans owned by the church to pick up the senior citizens and those members that do not have transportation. They have revivals once a year and they invite other members to the revival. The average members attending the revival are 150 people.

Mr. Sadoff asked Mr. Kim how many days the revival lasts. Mr. Kim said it is a weekend starting Friday and ending Sunday around 2 p.m.

Mr. Nielsen asked Mr. Kim if there will be people residing on the property. Mr. Kim said no. Mr. Frank asked Mr. Kim about the old pharmacy they have an apartment and if they are going to use this for security purposes. Mr. Kim said that their plan is to use it as an English ministry.

Mr. Moore asked Mr. Kim if he had an opportunity to review the comments from the Traffic Department. Mr. Kim said his architect will answer that question.

Hyoung Lee, project architect, said that the traffic report is very lengthy but they can modify the site plan to accommodate the traffic needs. Mr. Moore said that the issue of realigning the driveway approach and the aligning of the signal and if he was generally OK with that. Mr. Lee said yes, that is possible.

Mr. Nielsen said they are concerned with traffic safety if members come and go through the traffic signal.

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Ms. Beatty said that her recollection for the last project when there was access off of Lake Chabot Road, the same thing was requested to provide left-turn lane and signalization. As she recalls the estimate for that work was about \$100,000.

Public testimony was called for.

Jeff Howard, resident at 3269 Keith Avenue, said that he had the same concerns when they (the developers) wanted to turn it to residential units. Castro Valley has a General Plan and part of that is to maintain retail districts, this is a good retail district. Measure Q did not pass. He would prefer to see it stay as a retail area. Traffic is a big concern. Huber is an undersize street. Mr. Moore told Mr. Howard that since access to Huber is exit only and if this were approved and all the ingress was controlled by a traffic signal, if that would significantly alleviate his concerns. Mr. Howard said that they are going to put a bunch of houses at the top of Keith Avenue. It is going to become more than a thoroughfare than it is now. People coming onto Huber and exiting onto Keith. He asked that something be done.

Melba Akehurst, resident at 18915 Huber Drive, said that when she got her first glimpse of the plan, she was pleased. She is concerned about traffic coming onto Huber. There are places on that street that are only 18 foot wide. They seem to be an outreach church. She has been on that street for 56 years and she personally would be very comfortable with the church without any access or egress to Huber Drive. It can not handle any additional traffic.

Stephen Dearborn, resident at 3254 Keith Avenue, said that he would like the property to be maintained commercial. He has no problems with the church. He asked Ms. Beatty to clarify how many entrances are there into the property. Ms. Beatty said that one is proposed but the Traffic Division would like that entrance moved up to align with Quail. Currently there are two. His main concern is parking and traffic impacting his street. Just blocking that off would not solve all the problems in the street. They pay a price in that neighborhood to service the community with the swim center and the community center, now they are being asked to sacrifice for the church. The person who owns the property is asking too much money. Traffic and parking are the major concern. Mr. Frank asked Mr. Dearborn about his reaction to the restricted permitted parking. Mr. Dearborn said it is not good for anybody to have that kind of restrictions. Mr. Nielsen said that if they are not permitted to park in this area, they will have to find another means in order to have their members attend the church.

Mr. Moore asked Ms. Beatty for clarification in the staff report regarding the minimum number of required parking spaces. Ms. Beatty said that the Traffic Division had noted on the plans that there were 36 or 37 parking spaces. It was a typo on that particular page of the plans, and that the Traffic Division did not count the individual spaces. There are 59 parking spaces proposed.

Mr. Nielsen asked if an exit to the rear is required by the Fire Department for emergency vehicles. Ms. Beatty said that going back to the last application, the Fire Department had a big problem with the previous project with ingress and egress on to Huber and nothing on Lake Chabot because that was the only place to access those houses because they were proposing a large fence and a big retaining wall from Lake Chabot so there will be no way from them to get over that from Lake Chabot. There will be full access off of Lake

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Chabot so they will not have the same access that they would have with the last application.

Ms. Miraglia asked for clarification on how they calculated the seats. The staff report says one parking space for every 4 seats. Ms. Beatty said 1 of 4 spaces for the main sanctuary of the church. It is up to the Council to decide on the uses of the other buildings. Mr. Nielsen told Ms. Miraglia that typically, the churches have 1 or 2 services, that classes are attended by a portion of the congregation, opposing of those seating in the sanctuary.

Cliff Sherwood, Castro Valley resident, spoke in opposition. Most of you have been involved in the Specific Plan and General Plan and Strategic Plan, all of them called for retention of commercial property in Castro Valley. Approving this application will no longer be productive tax revenue to the County services that we require. The staff report did not address 4 findings that need to be made in the conditional use application. The first one is if the use is required by a public need: 5 members of their congregation live in Castro Valley, how that meets a public need. 3 other findings and the most important in this particular case is the safety of persons working in the vicinity: swim club and the community center across the street. Clearly this application health and safety of the residents in the area. He asked the Council to deny the application.

Edward Dang, resident at 16865 Huber Drive, said that he shared the same concerns. The staff report mentions the residential project, it was even suggested that they would prevent any parking on one side of Huber Drive. He would like to see Huber Drive restricted to emergency only. It has not been addressed. Once they move in and get the use permit if additional permits will be required if they want to expand their services and ministries.

Marc Crawford, resident at 3832 Somerset Avenue, spoke in opposition. He asked the Council to keep this neighborhood commercial. He looked at the parking and they only have 13 feet between parking stalls, that is not enough back up space. This parking plan would not work. He recently attended a meeting with Daniel Woldesenbet, and figures for upgrading this intersection were around \$800,000.

Vickie Devi, resident at 18809 Huber Drive, said that her main concern is traffic. She suggested to have hair and nail salons and a grocery store.

Charlie Lui, resident at 4251 Mulberry Court, Tracy, representing the church, said that the main issues here are traffic and safety. He said they had almost accepted an offer in February and they ended up closing escrow in September, their contract called for a 90 day escrow. They have always been out of contract. They made all the contractual agreements that they needed to make. He said that this location was for sale for some time, viable commercial opportunity there would have been an entrepreneur interested in buying that location. How can you be sure that there will be no parking issues if a store comes in, it is really up in the air. They are going to occupy the location on Fridays and Sundays mainly, so they are going to disturb the residents for 2 days out of the week. If there was a supermarket, you are going to see litter. Another issue was about parking. Currently, the church has 105 members from infants to seniors. They have 3 buses to shuttle the elderly. If we need to buy a bigger bus, he will find the way to buy it.

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Public testimony closed.

Mr. Sadoff said that it is really premature for the Council to make a decision. This project is really calling now for an in depth parking and traffic study and a focussed EIR on those issues. The EBMUD property is going to be developed, far ranging implications. He feels that the Council needs more information.

Mr. Frank said that there was a proposal for a 7 condo complex on a rezone from commercial to residential, adjacent to the property. It has been on the market for so long and there were no takers for whatever reason. The church is willing to make the adjustment in the alignment, if they put an emergency guard that lessens the impact. If the Council wants to review the restricted parking to mitigate the problems on Huber, that also is going to address the issue with respect to the swim club, the community center, those issues have to be addressed. In his opinion, the church will be a positive influence on the location under the present proposal. The capacity is 222, the church meets those requirements, and if they do the re-alignment that mitigates the traffic patterns, if they are willing to spend the money to mitigate those things. Why burden the applicant with extraordinary costs that are not necessary.

Ms. Sugimura said that piece of property has been vacant for so long and nothing positive has come out of it. As a good neighbor, the church will certainly work with the community members if there were issues raised in terms of parking. She would prefer to keep it commercial but the fact that it has been vacant for so long, it is a turning point for her.

Ms. Miraglia said that the fact that it remained vacant for so long speaks to the fact that the previous owner wanted too much money. She is certainly not opposed to the church but in this location she is because in addition that it is for commercial designation in our General Plan, the community made it quite clear the last time a project was before this Council that they wanted to retain commercial and retail and we need to do that. Additionally, the biggest concern is traffic and parking. This project would not be categorically exempt. It would have to go through CEQA.

Mr. Nielsen said that as a member of the Master Plan group, they worked hard to maintain this property for commercial use because on the west side of Castro Valley there is a void as far as adequate grocery sites. The property has been sitting vacant for 4 years. He has no problem with the church. The access to the rear would be the only thing that should be restricted. He thinks the Council should not burden the church with conditions that have not been imposed to other churches.

Mr. Moore said that he is in favor of retaining commercial. That site is in terrible condition, it is a blight. If we can not get an active and viable commercial use, churches go in neighborhoods. He concurred with the other council members regarding traffic concerns. Also, he said that tearing down Building "B" would add more parking and facilitate a different design on Building "A". A significant impact could be made in the re-design. He suggested that the applicant talks to staff before the Council sees this again, if the item should be continued.

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Mr. Sadoff said that he is a member of the Chabot Swim Club and he has seen a lot of the traffic issues on Huber and he understands the concerns of the residents. However, this is premature for the Council to vote on this without having all the information.

Mr. Nielsen said he respectfully disagree, he thinks the Council is just prolonging this. The Council can condition the approval that a traffic study be done and probably a recommendation be made for both Lake Chabot and for Huber, that has to be done because to allow traffic on Huber would cause harm to the neighborhood, but to hold up the project is not necessary. Mr. Frank concurred with Mr. Nielsen.

**Mr. Nielsen moved to approve Conditional Use Permit, C-8639 with staff considerations but also a condition that a thorough traffic study be done and mitigation on existing problems on Huber and Lake Chabot be solved. Mr. Frank seconded motion.**

Ms. Beatty said that one member of the public that was sitting in the meeting with the Director of Public Works said something that concerned her. They talked about the signalization for that site and the cost being possibly about \$800,000. She recalled the cost of the last project being lower. It is possible that Daniel Woldesenbet is right. Should the Council vote to conditionally approve this project possibly adding something to allow them to come back to MAC if the cost of that is too onerous.

Mr. Frank said that the process is they can always return if they find that economically can not proceed change their direction they can come back with the request. They are not forced to move forward economically, they always have a choice.

Mr. Nielsen said that if there is something that significantly changes the project, it is better to come back to MAC. Ms. Beatty said that rather than moving on to the Planning Commission with revisions, bring it back to MAC.

Ms. Miraglia asked if the motion that is in front of the Council is that we should approve this before we get the traffic study done. Mr. Nielsen said it is conditioned on the traffic study being done to mitigate traffic concerns.

Mr. Moore said we do not have Fire Department approval, he is not generally opposed to the project but there are too many questions that need to be answered. He suggested to make it a condition for the applicant to get clarity on some of the parking issues. He called for a motion for approval. Vote tied. Mr. Nielsen said this does not mean that the motion failed, when the Council has done this before and the project has moved on to the next level with a tied vote. Ms. Miraglia said that is at the Council's discretion. Mr. Moore said we can ask the applicant.

Mr. Frank said that it is up to the applicant to say if he wishes to come back and continue. If applicant decides to come back understanding 3/3 vote, is his election. If they want to come back to us to get a different vote they can move forward.

Ms. Beatty said that another alternative would be to vote again.

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Mr. Moore told the applicant that the vote was 3/3 split and tie, 3 council members have agreed to bring it back to discuss traffic issues; 3 have agreed to pass it on and. He asked the applicant if he has a preference to come back and try to work it out.

Charlie Lui said if they decide to come back if that means that they have to meet with the neighborhood on their own? Charlie Lui said they are going to take chances with the Planning Commission.

**Mr. Moore said this item will move forward to the Planning Commission with a no recommendation from MAC.**

4. **VARIANCE, V-12092 and SITE DEVELOPMENT REVIEW, S-2128 – MI ARCHITECTS/MOORJANI** – Application to allow building coverage of 29% where 20% is the maximum permitted with additions and remodel of an existing service station in the CVCBD Specific Plan Sub Area 1 (Castro Valley Central Business District Specific Plan, Low Intensity Retail), located at 2445 Castro Valley Boulevard, southwest, corner with Strobridge, unincorporated Castro Valley area of Alameda County, and designated Assessor's Parcel Number: 084A-0007-011-02.

Ms. Beatty presented the staff report. Ms. Miraglia asked the applicant if he had a copy of the color board. Mr. Moorjani said that the plans were modified and also presented a board with color designs.

Mr. Sadoff asked for an update from Public Works on the permit requirements. Ms. Beatty said that they just said they may be subject to stormwater requirements. Mr. Moore said it is probably not an issue, they are not creating more than 10,000 square feet of impervious area.

Mr. Moorjani said they (Public Works) wanted them to re-design the back parking lot and put a 6 feet of landscaping in the back little bit of parking place and they re-designed the parking place in the back. As far as providing a community service, they have people calling from Oakland and other far away places because nobody wants to take any more cars to work on because they can not make much money out of it. We take any car to be repaired and that is one of the best community services they do. They already submitted the plans for signage. It has to be done before December. It is a separate application.

Ms. Sugimura said that her recollection was that this calculation of 29% was inclusive of the bays. She asked Ms. Beatty if that was correct. Ms. Beatty said yes.

Public testimony was called for. No public testimony submitted.

Mr. Nielsen said that his understanding is that the request that was made was for the landscaping to be expanded. What he is doing in the back is absolutely super. He was hoping trees could be planted, that can be expanded to help with the screening process and to help improve the screening as far as the street is concerned.

Mr. Moorjani said that the property does not belong to him. If you look at the property line actually part of the island belongs to the city, he cannot really put anything there. In the front of the boulevard, there is a PG&E box. If he closes one of the 3 driveways, he can put a tree there. Mr. Nielsen asked Mr. Moorjani if he did not have any objection if

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he takes it to Redevelopment to expand the landscaping between the driveways instead of putting a tree there. Mr. Moorjani said he has no objection.

**Ms. Miraglia moved to approve Variance, V-12092 and Site Development Review, S-2128. Mr. Frank seconded. Motion carried 6/0.**

Mr. Nielsen said that Jaimie Benson, from the Redevelopment Agency, said that she would take it to the Citizens Advisory Committee for a recommendation. The CAC requested that the site be reviewed as far as expanding the landscaping and the work as far as Mr. Moorjani's request in getting help with the design improvement. That is in process.

5. **VARIANCE, V-12084 – MAURICE DAWSON** – Application to allow a 2 foot side yard setback where 5 foot is required, in a R-1-RV (Single Family Residence, Recreational Vehicle) District, located at 16715 Rolando Avenue, south west side 280 feet north east of Winding Blvd., Castro Valley area of unincorporated Alameda County, bearing County Assessor's designation: 080A-0212-021-00. **(Continued to November 13, 2007)**
6. **TENTATIVE PARCEL MAP, PM-9538 – TRAN** Application to subdivide one parcel containing 1.72 acres into four lots, in a R-1-BE-CSU-RV (Single Family Residence, 10,000 square foot Minimum Building Site Area, Conditional Secondary Unit, Recreational Vehicle) District, located at 4584 Ewing Court, north side, terminus north of Ewing Road, Castro Valley area of unincorporated Alameda County, bearing County Assessor's designation: 084D-1257-095-00. **(Continued to November 13, 2007)**
7. **TENTATIVE PARCEL MAP. PM-9609 – TUCKNOTT** - Application to subdivide two parcels containing .74 acres, approximately 32,297 square foot, into four lots, in a R-1-CSU-RV (Single Family Residence, Conditional Secondary Unit, Recreational Vehicle) District, located at 19455 & 19461 Parsons Avenue, west side, corner southwest of Costa Avenue, Castro Valley area of unincorporated Alameda County, bearing County Assessor's designation: 084D-0531-037-00.

Mr. Moore recused himself. Ms. Beatty presented the staff report.

Mr. Frank asked staff if the development that is on La Costa has been taken into consideration.

Doug Rogers, with Greenwood & Moore and representing the applicant, said that lot size consistency is an issue. This is an area with a mixture of older lots primarily on Parsons Avenue and newer developments over the last 20 years on La Costa Avenue. Also, a couple of parcel maps across from ours and adjacent to our property which all have been developed within 5,000 square foot lots. The computation in the staff report does not include any of those smaller lots. It is one of those cases where it is real difficult to determine the neighborhood average. The lot sizes within the County's computation range anywhere from 20,000 square feet to 5,000 square feet. We believe obviously this is one of the most important things. This is a case that you need to look more than the square footage of the parcels on Parsons; they are 75 feet wide, that's 25 feet wider than a lot of the existing lots in this neighborhood. Also, the lots are going to retain the two existing dwellings on the site. We think that the proposal that we have for those lots are

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larger than 85% than the lots in the County study. Those two lots on Parsons are going to be the same width which is consistent with the overall neighborhood in terms of the square footage.

Public testimony was called for.

David Riensche, resident at 3572 Badding Road, was unable to stay, but left his comments on the speaker card. He said that he had a great relationship with the applicant's mother for 14 years, but they are concerned about the hydrology of the area and not having the new homes drain towards Badding Road. They would also like to see that the lot size and new homes conform to current lot size and homes in current area.

Robert Gamez, resident at 19458 Parsons Avenue, complained that traffic is bad enough and is getting worse. He has lived at this address for 35 years.

Mr. Nielsen asked Mr. Gamez if he has talked to the neighbors and applied for traffic mitigation on Parsons. It has been successful in many other streets. He suggested to Mr. Gamez to do that and have petitions signed.

Public testimony closed.

Ms. Miraglia asked Mr. Rodgers about the storm drainage. Mr. Rodgers said that it is a legitimate concern, because their property basically drains to the rear towards Badding; we are proposing a storm drain to be installed along that in between the rear lot parcels and the rear lots on Badding. We are taking that into consideration. Ms. Miraglia referred to a memorandum from Steven Hunt, from Public Works Development Services, that says "it is not clear how the rear yard areas will drain". Mr. Rodgers said he does not know why. Ms. Miraglia told Mr. Rodgers that we need to get clear. Mr. Rodgers said that the storm drain line it has been there all along and he expected it to be installed.

Mr. Sadoff said if you look at the map, there is internal inconsistency, it looks like 3 parcels not 4 to be consistent with each other. The consistency with the adjacent and nearby surrounding lots parcels 3 and 4 are indeed quite a bit lower than the surrounding parcels.

Ms. Sugimura said she is also concerned about parcels 3 and 4.

Mr. Nielsen said that when the Council looked at developments in the past we know what the average is and he does not see a problem as far as lot size consistency, particularly the development to the south of the site which are all 5,000 square feet. The planner just looked along Parsons to the north, if he had looked at a circle of 300 feet he would have taken into consideration some of these 5,000 square feet parcels.

Mr. Frank mentioned several streets in the vicinity, everything is consistent with the sizes that they have. The new development for Parsons Avenue, nothing here that is not inconsistent with that. This is close to transportation, schools, shopping, village, walk to the banks. This is something that is consistent, provides service to the community, it is a viable alternative for people that want to walk to different churches in the area, walk to the post office. He is in favor of the project.

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Ms. Miraglia said that it is not really bad those lots on Parsons, except that if you look on Parsons Avenue and Badding Road, those lots would be significantly smaller whereas if you made it into 3 lots, the 2 lots on Parsons going longer and then the one lot across from La Costa..

**Mr. Frank moved to approve Tentative parcel Map, PM-9609 with Planning considerations. Mr. Nielsen seconded. Motion carried 3/2 with Mr. Sadoff and Ms. Miraglia opposed, Mr. Moore excused.**

**F. Open Forum –**

Sabrina Linden, representing Pacific Union Homes, gave an update of the project. They will meet Wednesday night at the HARD meeting for Castro Valley and encouraged council members to attend.

**G. Chair's Report - None**

**H. Committee Reports**

- **Eden Area Alcohol Policy Committee**
- **Redevelopment Citizens Advisory committee**
- **Ordinance Review committee –**

Ms. Miraglia said that there will be a meeting tomorrow night for the first time after several months of cancelled meetings.

- **Eden Area Livability Initiative**

Ms. Sugimura said that Saturday, October 27 there will be a community forum at the United Church of Christ, Oliver Hall, from 9 a.m. to 1 p.m. They will address the issues that were raised at the October 6 meeting. There will be child care and translation available.

The Castro Valley Library Arts Commission will have the arts works for the new library at Nate Miley's office through Friday of this week, Wednesday from 9 to 5, Thursday, from 11:00 to 4 p.m. and Friday via an appointment and then after that it comes to the Castro Valley Library from October 31 through November 30.

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

Ms. Beatty told council members that the next meeting will be Tuesday, November 13, since Monday is Veterans Day. She asked them if they will be able to attend on a Tuesday and also if they agree to start the meeting at 6:00 p.m. since we will have a full agenda. Council members Sugimura, Sadoff and Miraglia said they might not be able to attend. All agreed to start at 6 p.m.

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

**K. Adjourn**

The meeting was adjourned at 9:33 p.m.

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**Next Hearing Date: Monday, October 22, 2007**