

CASTRO VALLEY MUNICIPAL ADVISORY COUNCIL

Minutes for March 26, 2007

(Approved as corrected April 9, 2007)

- A. CALL TO ORDER:** The Chair called the meeting to order at 6:35 p.m. Council members present: Dean Nielsen, Chair; Ineda Adesanya, Vice Chair. Council members: Jeff Moore, Andy Frank, Cheryl Miraglia, Carol Sugimura and Dave Sadoff. Council members excused: None. Staff present: Tona Henninger, Sonia Urzua, Bob Swanson and Maria Elena Marquez. There were approximately 30 people in the audience.
- B. Approval of Minutes of March 12, 2007**
Ms. Sugimura submitted minor changes. Mr. Sadoff moved to approve the minutes of March 12, 2007 as corrected. Ms. Miraglia seconded. Motion carried 7/0.
- C. PUBLIC ANNOUNCEMENTS – None.**
- D. Consent Calendar – No Items.**
- E. Regular Calendar**

- 1. Informational Item-** The adoption of the Castro Valley General Plan (CVGP) and the Castro Valley Redevelopment Strategic Plan (Redevelopment Plan) will modify the allowed uses in several areas; these plans are drafted to be in support of each other. The existing Castro Valley Central Business District Specific Plan (CVCBD Plan) will become subservient to the CVGP and Redevelopment Plan, but anomalies will exist and interpretation will be necessary. Numerous implementation strategies and programs will result from the CVGP (such as updates of the zoning maps and other documents) which will take time to complete.

Mr. Amoroso spoke briefly about interim measures for planning applications and inquiries not consistent with the proposed Castro Valley General Plan policies and with the adopted Redevelopment Plan. Staff is anticipating some requests for uses that comply with the current plans but are out of compliance with the new plans. One option is to bring these potential projects before the MAC in order to gather input about the appropriateness of the proposal.

Mr. Nielsen asked Mr. Amoroso about providing this opportunity to potential applicants before requiring the full application fee to be paid. Mr. Amoroso said most cases will be handled in that manner.

Mr. Frank asked if it is going to be an agenda item or not. Mr. Amoroso said it will be on the agenda.

Mr. Moore, Mr. Nielsen, and Ms. Miraglia discussed what the scope of the discussion would be; for example, would it include the application of policies or uses. Mr. Amoroso responded that the discussion would be limited to uses.

Mr. Frank told Mr. Amoroso that if it is an agenda item, according to the Brown Act, you cannot get into specifics.

Public testimony was called for. No public testimony submitted.

2. **SITE DEVELOPMENT REVIEW, S-2107 – ZOU/HOANG** – Application to allow the remodel of an existing building to be used as a restaurant in the CVCBD, Sub 3 (Castro Valley Central Business District Specific Plan, Sub Area 3) located at 2688 Castro Valley Boulevard, north side, west of Lake Chabot Road, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 84A-0181-057-03. **(Continued from February 26, 2007 to April 9, 2007).**

3. **CONDITIONAL USE PERMIT, C-8576 – MARCO ANTONIO ARIAS**
Application to allow sales of hard liquor in an existing tavern/ restaurant (Los Molcajetes) in a C-1 (Retail Business) District, located at 22152 & 22154 Redwood Road, east side, 550 north of Grove Way, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 416-0030-017-02.

Mr. Nielsen recused himself.

Ms. Urzua presented the staff report. She indicated that the staff planner recommends approval and a three year expiration period. A comment letter was received from the First Presbyterian Church requesting not to recommend approval of the application. Ms. Sugimura asked staff if an alcohol license goes with the business or with the site. Ms. Urzua said it goes with the business. Mr. Sadoff asked staff if the parking issue was addressed in the letter. Ms. Urzua said that the staff report describes the current conditions and includes a condition of approval which would address any parking deficiency.

Ms. Sugimura asked if they were selling alcohol without a license. Ms. Urzua said that they have a license now for beer and wine, not for hard liquor.

Ms. Adesanya asked for clarification on the conditions proposed by COMMPRE and those recommended by staff. Ms. Urzua explained that those omitted were difficult to enforce and related to financial and employment matters as examples.

Edward Guerrero spoke on behalf of the applicant. He stated that this is a family restaurant. He gave a brief history of the restaurant. The main reason for the upgrade is to be able to offer to the existing clientele margaritas and other exotic drinks only with the meals. They are going to have the same schedules and there

will always be somebody supervising the business. There will be no cantina or tavern. The consensus is that the license will go with the business. If they sell the business, they will sell it as a restaurant with the license.

Ms. Adesanya asked Mr. Guerrero how long the Arias family has owned the business. Mr. Guerrero said seven years. He said that it used to be a Greek restaurant under a different name.

Ms. Miraglia noted the planner's recommendation regarding a parking arrangement with one of the adjacent neighbors. Given the letter received from the First Presbyterian Church, they are not going to enter in any arrangement. Mr. Guerrero said they have not spoken to anybody. The owner of the building gave the opportunity to use all the parking spaces available. The family is willing to speak to the adjacent property owners to explore that option. They have not had any complaints from the other vendors or with the church. They have not had an issue with parking.

Ms. Miraglia said that the parking is an issue and the recommendation from the planner basically says that the applicant has 30 days if the Council were to approve this condition to come up with an agreement with either Trader Joe's or the church on parking.

Ms. Adesanya clarified that the petition is not for a renewal of the conditional use permit but for a change in the liquor license to hard liquor. She asked if staff commented on the church's concerns about increased demand related to the license change. Ms. Urzua said that according to the staff report, the deficient parking was part of the non-conforming aspect of the use; however since the higher demand in parking would probably occur during off hours from other companies uses, it is unlikely that there would be a higher parking demand.

Mr. Frank said that it has not been a problem in the past. He opined it will not be a problem in the future. He noted that there are code enforcement mechanisms if a problem arose.

Mr. Moore said he agreed that there is insufficient parking. He asked if it was fair to bring up an issue and asked staff about other options. Ms. Urzua said that condition #14 sets a one year period when this CUP can be reviewed. Mr. Moore said he has no objection in asking them to make an effort to try to get more parking. He asked about the implications in the event that Trader Joe's or the church is not interested in a parking arrangement.

Ms. Miraglia asked if they currently have a conditional use permit. Ms. Urzua said no, but for the non conforming use status, they would have to have it.

Ms. Adesanya asked if the beer and wine does not require a use permit. Mr. Guerrero replied that not at the time of the previous ownership. Ms. Henninger

explained the requirements under the ordinance for alcohol outlets. Ms. Adesanya told the applicant if serving hard alcohol would increase his clientele. Mr. Guerrero said that the owners are hoping to increase their clientele. Currently, since the restaurant does not serve margaritas, people walk out.

Mr. Sadoff asked the applicant if there were more customers during lunch or dinner time. Mr. Guerrero said dinner time.

Public testimony was called for.

Mark Arhontes, resident at 2237 Kipling Street, appeared in opposition and noted concerns about dumping the grease down the storm drain, insufficient parking and increased crime in the neighborhood.

Ms. Adesanya asked staff if there are any violations. Ms. Urzua said no.

Mr. Guerrero responded to the resident's concerns and stated they have not had any complaints or citations as far as the restaurant is concerned.

Mr. Sadoff and Mr. Frank asked staff for more information about the Health Services Department's inspections. Ms. Henninger described the role between Code Enforcement staff, the Health Department and the Sheriff's Department for liquor outlets.

Ms. Henninger described the work of the Alcohol Policy committee which meets with Supervisor Miley on a monthly basis. This particular place has not been considered a problem. Code Enforcement has not heard anything related to traffic issues.

Ms. Adesanya discussed the implications of including and eliminating condition # 2.

Mr. Frank discussed the methods contained within the ordinance to address any parking problems which may arise.

Mr. Moore said he is not concerned because it is not a demonstrated problem. He suggested striking condition # 2, change condition # 14 to say 6 months instead of a year.

Ms. Henninger suggested that changing the time frame for condition #14 may not be necessary since under the administrative code, the CUP can be reconsidered at any time.

Ms. Miraglia and Mr. Sadoff asked what would trigger further review of the parking requirement given the complaint filed by the church. Ms. Henninger replied that any sort of complaint and an inspection on behalf of Code

Enforcement. There is an annual inspection and any complaint from neighboring businesses would trigger a review.

With regard to the church's letter, Mr. Frank said about the timing of the correspondence. Ms. Adesanya noted the general nature of their concern, not specific to the restaurant. In her opinion, this business is going to get more patrons at night when the other businesses are not open.

Mr. Sadoff said that there has not been a complaint up until this time. Without non-documented parking issues directly related to this restaurant, he is inclined to have it approved and have them come back if there is a complaint.

Ms. Adesanya said that if there is a complaint, have it come back in 30 days. A scheduled review within six months will also be helpful.

Ms. Sugimura suggested a scheduled review in six months. Ms. Henninger said she will check with the Health Department. She wanted to make sure that there will be a process associated with the six months review.

Ms. Adesanya told the applicant that it appears that the Council will approve this permit with the condition to come back within 6 months. There will be an additional application inspection fee.

Mr. Moore moved to approve Conditional Use Permit, C-8576 with a modification to eliminate condition # 2 and with the modification to change the timeframe to six months of condition #14. There will be an inspection fee that the applicant will have to pay. Mr. Frank seconded. Motion carried 5/1/1 with Mr. Nielsen recused and Ms. Miraglia opposed.

4. **VARIANCE, V-12038 – ZORAN MILENKOVIC** – Application to allow construction of an accessory structure covering 48% of the required rear yard where 30% is allowed in a R-1-CSU-RV (Single Family Residence, Conditional Secondary Unit, Recreational Vehicle) District, located at 3575 Christensen Lane, south side, 800 feet east of Lake Chabot Road, in the unincorporated Castro Valley Area of Alameda County, bearing Assessor's Parcel Number: 84B-0529-002

Ms. Urzua presented the staff report. This item was before this Council back in December 2006. The West County Board of Zoning Adjustments approved the variance for a side yard set back. The staff planner recommends denial.

Mr. Moore asked about the findings made to support the side yard variance request. Ms. Urzua read the resolution attached to the staff report.

Ms. Adesanya asked staff about the difference between the original proposal and the revised proposal. Ms. Urzua explained the reduction in the size of the permanent structure.

Mr. Moore said that this Council denied it before and asked why it is back again. Ms. Urzua replied that it is 10% less and the WBZA wanted the Council to review the revised design.

Mr. Nielsen asked about the possibility of applying the compensating open space provision to this property given the location of the residence. Ms. Urzua explained that compensating open space is not an option in this case.

Mr. Moore asked if the previous application had an extension to the garage.

Suljo Sabanovic, owner, described the current proposal. Mr. Nielsen asked about the proposed height. Mr. Frank asked about the pool's length.

Ms. Adesanya asked Mr. Sabanovic about his neighbor's opinion about the structure. Mr. Sabanovic said he has had no complaints. Mr. Frank asked Mr. Sabanovic if he has more specific architectural plans.

Ms. Adesanya said she cannot make the findings on the special circumstances.

Public testimony was called for. No public testimony submitted.

Mr. Moore told Mr. Sabanovic that the location of the pool is an unfortunate choice. It is hard to make the findings that would allow justification. He would not be in favor of granting the variance just for that reason.

Ms. Miraglia moved to deny Variance, V-12038. Mr. Moore seconded. Motion carried 7/0.

**5. VARIANCES, V-12051, V-12057
SITE DEVELOPMENT REVIEW, S-2098, S-2110, S-2111 – DE LA
CADENA & AUFDERMAUER – Continued.**

Mr. Nielsen indicated that although this item has been continued, there are two persons from the public that would like to speak on this item. Mr. Moore said he has not seen that on a continued item there is public comment. Ms. Urzua said that the Council can take public comment.

Gerry Thompson, resident at 17764 Madison Avenue, read a comment letter that was entered into the record regarding three properties involved.

**6. TENTATIVE PARCEL MAP, PM-9016 AND VARIANCE V-12006 –
HUANG - Application to allow the subdivision of one lot into three and to allow**

a side yard setback of five feet, six inches, where ten feet is required, and an eight foot rear yard setback where 20 feet is required, located at 21125 Tyee Court, northwest side, approximately 500 feet north of Norbridge Avenue, Castro Valley area of unincorporated Alameda County, bearing the Assessor's Parcel Number 084A-0025-002-00.

Ms. Urzua presented the staff report. She noted the staff planner's memo summarizing neighborhood concerns. The staff planner is recommending denial based on the lot size consistency policy and insufficient evidence to support the variance findings.

Steven Montel, representing the applicant, stated that they have a new design. Mr. Nielsen asked Mr. Montel if the plans were different than what was in the staff report. Mr. Montel said yes. Mr. Nielsen told him that the Council will have to continue the matter. Mr. Montel agreed. He requested clarification about noticing requirements and the definition of "surrounding area" as discussed in the lot size consistency policy.

Mr. Moore asked Mr. Montel about the nature of the changes. Mr. Montel said that the changes involved the configuration and the lot size.

Mr. Nielsen told Mr. Montel that the Council needs to see what he is talking about. Mr. Montel said he wanted to continue it. Mr. Nielsen told Mr. Montel to come back April 9.

Nabil Wahbeh, resident at 21132 Tyee Court, spoke in opposition to the variance requests citing to the dimensions of Tyee Court and the lack of parking.

Marshall Hilburn, resident at 2671 Cohoe Court, spoke in opposition to the variance citing concerns about parking and low water pressure in the area. He is not against new housing.

John Coates, resident at 2650 Cohoe Court, presented a comment letter that was entered into the record. Mr. Moore told Mr. Coates to talk to staff. Mr. Coates said he has spoken with staff about some inconsistencies.

John Wolff, representing his grandfather, stated that he is an original property owner and he generally supports dividing these properties while recognizing a scarcity in parking.

Mr. Carl also stated that he is not opposed to the lot split while recognizing a scarcity in parking.

Monique Coates, 2650 Cohoe Court, said that she is very concerned about the process given the numerous postponements. She requested if this item can be moved up in the agenda on the date of the hearing.

Mr. Moore said that the Council has discussed the issue about multiple postponements. The Council should go with what we got and move it forward.

Mr. Montel made an additional comment about parking.

Mr. Nielsen suggested to Mr. Montel address the issue with the staff planner and make sure the Council gets all the information.

Mr. Moore asked about the tentative parcel maps submitted for consideration.

Mr. Nielsen said that this item will be continued again. Ms. Urzua said that it will be re-noticed.

F. Open Forum

John Coates, resident at 2650 Cohoe Court, asked about the public hearing process and the noticing requirements. He opined that the timeframes for public feedback was too short.

Mr. Moore asked Ms. Urzua to explain the noticing requirements. Ms. Urzua described the state mandated requirements.

G. Chair's Report – None.

H. Committee Reports

- **Eden Area Alcohol Policy Committee**
- **Redevelopment Citizens Advisory Committee**

Ms. Miraglia asked Mr. Nielsen and Mr. Moore for an update. Mr. Nielsen replied that the Daughtry Building was reviewed by the committee regarding funding a project. Ms. Miraglia asked Mr. Nielsen about the proposed tenant mix. Ms. Miraglia also asked about the financial aspect of the deal and about the timeframe of decision making.

- **Ordinance Review Committee**

Ms. Miraglia informed that the meeting for March has been cancelled. The next one is scheduled for April. In May, the committee will start working on guidelines.

I. Staff Announcements, Comments and Reports –

Ms. Urzua informed council members that she accepted a position with the Redevelopment Agency. She will staff the April 9 meeting.

J. Council Announcements, Comments and Reports

Mr. Frank said that the library will have a book sale, April 12, 13 and 14. He said volunteers are welcomed. Ms. Sugimura said that there is going to be an Open Forum on March 29 when the artists who are being considered for the art work in the library will met with the community.

Ms. Sugimura asked that Planning staff include copies of past minutes if an item had been previously heard by the MAC.

Ms. Sugimura asked about the Council's role regarding Castro Valley Blvd. She noticed a green building on Castro Valley Boulevard, next to Donut Express. Ms. Henninger said that it was brought to the Department's and Redevelopment's attention. She would like to see some balance between creativity and guidelines.

K. Adjourn

The meeting was adjourned at 8:46 p.m.

Next hearing Date: April 9, 2007