

CASTRO VALLEY MUNICIPAL ADVISORY COUNCIL

Minutes for July 23, 2007

(Approved as corrected August 27, 2007)

- A. CALL TO ORDER:** The Chair called the meeting to order at 6:30 p.m. Council members present: Ineda Adesanya, Chair; Jeff Moore, Vice Chair. Council members: Dean Nielsen, Andy Frank, Cheryl Miraglia and Carol Sugimura. Council members excused: Dave Sadoff. Staff present: Tona Henninger, Jana Beatty, Bob Swanson and Maria Elena Marquez. There were approximately 6 people in the audience.
- B. Approval of Minutes of July 9, 2007 -** The minutes of July 9, 2007 were continued to the next meeting.
- C. PUBLIC ANNOUNCEMENTS –** None
- D. Consent Calendar**
- 1. CONDITIONAL USE PERMIT, C-8613 – ALT CARE, INC. –** Application to allow continued operation of a residential care facility, in a R-1-L-B-E (Single Family Residence, Limited Agricultural, 5 Acre MBSA, 300' MLW, 30' FY) District, located at 6127 E. Castro Valley Blvd., south side 700 feet west of Palo Verde Rd., unincorporated Castro Valley area of Alameda County, bearing Assessor's Parcel Number: 085A-0550-012-00. **(Moved from the Regular Calendar). Ms. Miraglia moved to approve Conditional Use Permit, C-8613. Ms. Sugimura seconded. Motion carried 6/0/1 with Mr. Sadoff excused.**
- E. Regular Calendar**
- 1. VARIANCE, V-11982, PATRICK LOVE -** Application to retain a converted one-car garage so as to locate one required on-site parking space partially in the side yard and on a five foot easement along the west property line 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 from April 24, 2006; to be continued to July 23, 2007).**
- 2. CONDITIONAL USE PERMIT, C-8613 – ALT CARE, INC. –** Application to allow continued operation of a residential care facility, in a R-1-L-B-E (Single Family Residence, Limited Agricultural, 5 Acre MBSA, 300' MLW, 30' FY) District, located at 6127 E. Castro Valley Blvd., south side 700 feet west of Palo Verde Rd., unincorporated Castro Valley area of Alameda County, bearing Assessor's Parcel Number: 085A-0550-012-00. **(Moved to the Consent Calendar).**
- 3. CONDITIONAL USE PERMIT, C-8619 – FIRST BAPTIST CHURCH –** Application to allow continued operation of a church, in a C-N (Neighborhood Business) District, located at 4274 Seven Hills Road, north side corner west of Watters Drive, unincorporated Castro Valley area of Alameda County, bearing Assessor's Parcel Number: 084D-1212-001-11. **(Continued to March 10, 2008).**

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- 4. CONDITIONAL USE PERMIT, C-8638 – JASON OSBORNE/NSA WIRELESS**
– Application to allow continued operation of a telecommunication facility in a M-1 (Light Industrial) District, located at 22020 Center Street, east side corner north east of Grove Way, Castro Valley area of unincorporated Alameda County, bearing County Assessor's designation: 417-001-007-05.

Ms. Beatty presented the staff report. This item was heard by the MAC in 2003. Staff is not aware of any violations related to the site, therefore recommends approval. The permit is for 10 years.

Jason Osborne, representing the applicant, was present.

Ms. Miraglia asked staff about the overgrown condition of the landscaping on that property. She also asked if PG&E or the wireless lease holder is responsible for the landscaping. Ms. Beatty said that depends on how the lease was written. She has seen some instances where it is just the carrier responsible for the maintenance of the site or a combination of both.

Mr. Osborne said that under this lease it was with PG&E.

Ms. Miraglia said that the condition of the landscaping is pretty bad. She asked if this could be addressed through this provider or PG&E.

Ms. Henninger said that we can ask PG&E through a normal NPO (Neighborhood Preservation Ordinance) unless the Council wants additional landscaping.

Mr. Moore suggested that this item be brought back to council in 30 days as an informational item.

Ms. Henninger stated council can bring it back in 30 days under the current conditions. If the Council is looking for additional landscaping, that would be a separate issue that either could be addressed with PG&E or each carrier as it comes up. Mr. Moore said it should be PG&E.

Mr. Nielsen said council can approve it and then insist that they do the landscape as shown in the drawing and then have PG&E clean the site.

Ms. Miraglia said that along the perimeter and the entrance of it, it needs both clean up and some enhancement. The motion should be to have a condition added for approval of the landscape plans as submitted and then have Code Enforcement deal with PG&E.

Ms. Sugimura asked Mr. Osborne about the picture of the antenna on the staff report asking about disguising the antenna to blend with the landscape. She was told it was not part of the original request and was very costly Mr. Osborne stated that the permit is not for a new antenna, there are no changes to the original permit. The application is for continued operation of the site.

Public testimony was called for. No public testimony submitted.

Ms. Miraglia moved to recommend approval of Conditional Use Permit, C-8638 with staff recommendations, with an additional condition that they do the landscaping plan as proposed and direct staff under Neighborhood Preservation Ordinance (Neighborhood Preservation Ordinance) to meet with PG&E to clean up and possibly enhance the overall site. Mr. Nielsen seconded. Motion carried 6/0/1 with Mr. Sadoff excused.

5. **VARIANCE, V-12077 – CHRIS & ANGELA WILHELM** – Application to allow an accessory structure (Pool & arbor) in the front half of the lot and allow a 6 feet high fence where 4 feet is maximum, in a R-1-B-E-CSU-RV (Single Family Residence, 10,000 square feet. M.B.S.A., 80’M.L.W., Conditional Secondary Unit, Recreational Vehicle) District, located at 17520 Cardinal Court, east side corner north east of Proctor Road, unincorporated Castro Valley area of Alameda County, bearing Assessor’s designation: 084D-1401-021-00.

Ms. Beatty presented the staff report. Staff is recommending approval based on the unusual configuration of the lot and the definition of the front and side yard.

Ms. Adesanya asked if there was an existing fence at the side. Ms. Beatty replied that there are two fences, appearing to be some sort of easement in between.

Chris and Angela Wilhelm, applicants, said that they bought the home with the fence already there. There are two fences, one is more of a decorative fence, and the fence that they consider as the backyard, the builder put it in. The house faces Proctor Road and the fence was already there, actually about level with Proctor Road. The yard is visible from the sidewalk. They are not proposing a bigger fence. It was installed by the builder.

Mr. Nielsen said that he has been by the site several times and the fence is not intrusive. The concern is when someone wants to put a 6 foot fence right at the edge of the side yard. Ms. Wilhelm said that there is an easement that extends from Proctor Road to that 6 foot fence and nothing can be built on that easement. Mr. Nielsen said the concern is if the proposed fence is higher than the existing fence. The applicant said they are proposing to leave the fence as it is and making improvements within the enclosed area. The applicant confirmed that the fence is six feet tall.

Ms. Miraglia asked Mr. Wilhelm how close was the proposed arbor to the house. The applicant said it is about 10 to 12 feet from the south portion of the house, almost 20 feet from the western side of the house. Mr. Nielsen asked Mr. Wilhelm how high is the arbor. The applicant answered 12 feet. Mr. Wilhelm said that they have a house behind them which is on Proctor Road. Ms. Miraglia asked what finish they were proposing for the arbor. The applicant answered that it match the house.

Mr. Nielsen said that this is an exception because of the height of the house behind this house and also the grade of these lots. He believes that whatever motion the Council makes, it needs to be specific to the grade differential as a special circumstance so it does not create a precedent to other applications without this special circumstance.

Ms. Beatty suggested that council make modifications to the tentative findings in the staff report. This will give county staff guidelines for future proposals. Ms. Miraglia referred to tentative finding # 1.

Mr. Moore said that height is not an issue. They can put it right on the property with 12 feet high and not need a variance. Mr. Nielsen said if someone else came in with a 12 feet, they would say that his neighbor put one and how come he would not be allowed to put one.

Public testimony was called for. No public testimony submitted.

Ms. Adesanya said that a letter was received from Lester Tom. He is opposed to this project. He asked for landscape to soften the look of the fence. The letter was entered into the record.

Mr. Nielsen moved to approve Variance, V-12077 with a note that because of the topography that the height of the arbor does not interfere with the adjacent property. Mr. Frank seconded. Motion carried 6/0/1 Sadoff excused.

F. Open Forum - None

G. Chair's Report - None

H. Committee Reports

- **Eden Area Livability Initiative**

Ms. Sugimura said that there were 3 town hall meetings. The consultant group Prevention Institute facilitated a good portion of the meeting. She will send council members a copy of an article published by The Daily Review regarding one of the meetings. There was good attendance. They were looking at livability factors in a different way. Mr. Frank said he has had positive feedback from people that have attended the meetings.

- **Ordinance Review Committee - There was no report.**

- **Eden Area Alcohol Policy Committee**

Ms. Miraglia said that she went to the meeting. There are a lot of questions still not answered, hopefully there will be some answers at the next meeting.

- **Redevelopment Citizens Advisory Committee**

Mr. Nielsen said that at the last Citizens Advisory meeting, the committee explored the idea of expanding the boundaries for the redevelopment plan. One site of interest is the parcel on Lake Chabot Road and Seven Hills Road. The other areas are located along A Street behind the piano store towards the

Japanese Garden. That property is owned by Caltrans. This area would be good for the post office relocation. Discussion ensued on the problems with a partial relocation of the post office.

Mr. Swanson informed the council that he recalls the post office was looking at a piece of property to buy for the post office trucks only and turning the current location into retail. Mr. Nielsen said that this site they looked at was large enough for both. By splitting the post office services, it will delay processing of Castro Valley mail.

A discussion ensued among council members regarding the best location for a new post office, where to move the trucks and where it would be best for the mail to be sorted. Ms. Sugimura said that if possible to go with Mr. Swanson's plan of moving out the trucks at the current location and leave the retail accessible to Castro Village and downtown to draw people in.

Mr. Frank asked Mr. Nielsen what was the thinking on Lake Chabot property. Mr. Nielsen said they would like to include that piece of property in the redevelopment project area. Ms. Beatty asked Mr. Nielsen if he was aware of the CUP application for a church at that location. Mr. Nielsen said yes. They had some difficulty financing it. There is another business in town who is very interested in that property. Ms. Beatty said churches have to be treated very carefully, specially this one because of the controversy. Mr. Nielsen said it is very straight forward with the church application.

Mr. Moore asked about the status of the restaurant on the boulevard that was remodeled by Tony's Pyzano. Ms. Henninger said they were having some issues with permits. Ms. Sugimura said that she spoke with Tony and he related to her that he had some problems with newly purchased equipment. There were some other difficulties.

Ms. Miraglia asked for a status report on a subdivision on Proctor Road. This was a request from the applicant for a modification of a prior condition of a masonry wall on one side of the property. Ms. Miraglia said that after an appeal had been filed by the applicant because he did not want to do the masonry wall and consequently was denied by the Board of Supervisors, Supervisor Haggerty asked that it comes before the Board again. She heard that the board reversed its prior decision and changed the masonry wall to a wooden fence. She did not understand how they could bring it back to the board and reverse the prior decision.

Mr. Swanson explained that during the first board meeting for the appeal of the applicant, Supervisor Haggerty asked the neighbor who wanted the masonry wall if he himself had a masonry wall between him and his neighbor, since the situation was exactly the same. The neighbor said yes. Subsequently, Supervisor Haggerty found out that the neighbor lied and that is why he requested that the item be brought before the Board again.

Ms. Miraglia said that if it is going back to the Board of Supervisors again, at least the Council should be informed. She personally has an issue with the whole thing going back at all. If they are going to reinstate what the MAC board proposed and make it stronger, she agrees with that, but not with the reversal.

Mr. Swanson said that one of the things that were discussed was a sound attenuating wooden fence. Ms. Miraglia said there is no such thing as an attenuating wooden fence. Mr. Nielsen recalled that during the first meeting Council members tried to talk to the applicant out at building the concrete block wall to begin with and he said that he would go ahead with it. The MAC would not want to set a precedent by putting sound walls between properties. Ms. Miraglia said that if the Board of Supervisors approved it and then they come back and change their mind, it sets a bad precedent. Ms. Miraglia said that the first time it went to the Board of Supervisors was in 2003. It was approved.

Mr. Frank spoke about the cost of concrete and that this man did not realize how much at that time was going to cost. The Chair asked staff to bring an update on this item for the next meeting.

I. Staff Announcements, Comments and Reports

Ms. Henninger said that council members received a copy of a letter that Planning staff sent to the developer of Todika Place. The letter is specific to the issues that are still outstanding. This is the latest update and what is remaining to be completed. Mr. Frank asked if she had the findings on the decision. Ms. Henninger said she does not have that information.

Mr. Frank asked if there was further information on the house on Center Street. Ms. Henninger said that they needed two variances, one was for the front yard set back, and the second variance was to allow an average height of 27 feet and the project has been approved.

J. Council Announcements, Comments and Reports

Mr. Nielsen asked about the development on Forest Avenue if they are going to allow occupancy before the Council gets clarification on how the 35 feet height got approved. Ms. Henninger said that if the developer meets all the conditions they will be allowed to occupy the building. Mr. Nielsen inquired county staff if currently an applicant proposed such a change would the MAC board be notified prior to a final decision. Ms. Henninger answered yes.

K. Adjourn –

The meeting was adjourned at 7:19 p.m.

Next Hearing Date: August 13, 2007