



Agenda
Planning Commission Meeting
7:00 P.M. on Tuesday, August 26, 2008
Clayton Community Library Meeting Room
6125 Clayton Road, Clayton

CALL TO ORDER, ROLL CALL, PLEDGE TO THE FLAG

Administrative

- 1A. Review of agenda items.
- 1B. Commissioner Armstrong to report at the September 2, 2008 City Council meeting.

Public Comment

Approval of Minutes

- 2. Approval of minutes from the meeting of August 12, 2008.

Public Hearings

- 3. None

Old Business

- 4. None

New Business

- 5A. **CDD 11-08, City of Clayton.** Study session item regarding possible amendment of the Municipal Code to allow outside sales in residential areas.
Proposed Action: Provide direction to staff.
- 5B. **CDD 10-08, City of Clayton.** Study session item regarding possible amendment of Chapter 17.44 of the Municipal Code to increase the thresholds for administrative review of minor additions to residences.
Proposed Action: Provide direction to staff.

Communications

- 6A. Staff
- 6B. Commission

Adjournment

7. The next meeting of the Planning Commission is scheduled for **Tuesday, September 9, 2008.**

Most Planning Commission decisions are appealable to the City Council within ten (10) calendar days of the decision. Please contact Community Development Department staff for further information immediately following the decision. If the decision is appealed, the City Council will hold a public hearing and make a final decision. If you challenge a final decision of the City in court, you may be limited to raising only those issues you or someone else raised at the public hearing(s), either in oral testimony at the hearing(s) or in written correspondence delivered to the Community Development Department at or prior to the public hearing(s). Further, any court challenge must be made within 90 days of the final decision on the noticed matter. If you have a physical impairment that requires special accommodations to participate, please contact the Community Development Department at least 72 hours in advance of the meeting at 925-673-7340.

An affirmative vote of the Planning Commission is required for approval. A tie vote (e.g., 2-2) is considered a denial. Therefore, applicants may wish to request a continuance to a later Commission meeting if only four Planning Commissioners are present.

Any writing or documents provided to the majority of the Planning Commission after distribution of the agenda packet regarding any item on this agenda will be made available for public inspection in the Community Development Department located at 6000 Heritage Trail during normal business hours.

Minutes
City of Clayton Planning Commission Special Meeting
Tuesday, August 12, 2008

Call to Order

Chair Haydon called the meeting to order at 7:00 p.m. at the Library Meeting Room, Clayton Community Library, 6125 Clayton Road, Clayton.

Present: Chair Keith Haydon, Vice Chair Tuija Catalano, Commissioner Bob Armstrong, Commissioner Ed Hartley, Commissioner Sandra Johnson

Absent: None

Staff: Community Development Director David Woltering
Assistant Planner Milan Sikela, Jr.

Administrative

1A. Election of Chair and Vice Chair.

Chair Haydon moved and Commissioner Hartley seconded a motion to elect Vice Chair Catalano as Chair of the Planning Commission. The motion passed 5-0.

Commissioner Armstrong moved and Commissioner Haydon seconded a motion to elect Commissioner Hartley as Vice Chair of the Planning Commission. The motion passed 5-0.

1B. Review of agenda items.

1C. Commissioner Hartley to report at the August 19, 2008 City Council meeting.

Public Comment

Jim Schwandt, 1092 Mitchell Canyon Road, indicated the following:

- He opposes the administrative denial of a Use Permit to allow outside sales of produce at 1098 Mitchell Canyon Road.
- The outdoor sales of produce teaches kids the ethics of hard work and the value of self sufficiency.
- The daughters of the property owner sell flowers, fruits, and vegetables.
- This is not a commercial endeavor, it's merely an enhanced lemonade stand.

In response to these comments, Director Woltering indicated the following:

- It should be noted that outdoor sales of produce in a residential district is not an allowed use and that no formal application had been made.
- The merits of this matter should not be formally discussed at this meeting because it is not on the agenda. However, the Commission could direct staff to place the matter on a future agenda for discussion.
- Staff would properly notice the item if and when it become a public hearing issue.

There were no other public comments. The Commission directed staff to place the matter raised by Mr. Schwandt on a future Planning Commission agenda for discussion.

Approval of Minutes

2. Approval of minutes from the special meeting of July 29, 2008.

Commissioner Johnson moved and Vice Chair Hartley seconded a motion to approve the minutes from the special meeting of July 29, 2008, as amended. The motion passed 5-0.

Public Hearings

- 3A. **SPR 05-08, Site Plan Review Permit, Mike Roberts, 1501 North El Camino Drive, APN 118-072-001.** A Site Plan Review Permit to allow the construction of an addition to an existing single-story, single-family residence. The addition will measure approximately 14 feet in height and 500 square feet in area.

Assistant Planner Sikela presented the staff report. The public hearing was opened. The applicant indicated that he was available for questions. There being no questions, the public hearing was closed. The Commission had no comments.

Chair Catalano moved and Commissioner Johnson seconded a motion to approve Site Plan Review Permit SPR 05-08, with findings and conditions recommended by staff. The motion passed 5-0.

- 3B. **SPR 06-08, Site Plan Review Permit, Joseph Swicegood, 1420 Lydia Lane, APN 120-051-006.** A Site Plan Review Permit to allow the construction of an addition to an existing single-story, single-family residence. The addition will measure approximately 15 feet in height and 370 square feet in area.

Assistant Planner Sikela presented the staff report. The public hearing was opened.

The applicant, Joseph Swicegood, indicated that he thought it would be better if minor additions to residences could be administratively reviewed and approved to save the applicant time, money, and energy.

The Commission asked staff to address the applicant's concern. *Director Woltering indicated that City's Municipal Code has specific provisions that require Commission review and approval of this type of project. However, the applicant's comments had merit and that raising the City's thresholds to allow items like this one to be considered administratively could be considered as a possible amendment to the Zoning Ordinance.*

There being no further public comment, the public hearing was closed. The Commission had no further comments.

Commissioner Armstrong moved and Vice Chair Hartley seconded a motion to approve Site Plan Review Permit SPR 06-08, with findings and conditions recommended by staff. The motion passed 5-0.

- 3C. **UP 04-08, Use Permit, Clayton Mind and Body**, 6200 Center Street, Suite I, APN 119-620-060. A Use Permit to allow the operation of a massage therapy and skin care business in a ground-floor retail tenant space within the Town Center. The applicant is Clayton Mind and Body.

Assistant Planner Sikela presented the staff report. The public hearing was opened.

The applicant, David Godsoe, indicated the following:

- We have limited sales of retail items (massage creams, oils, etc.).
- We are proposing to move to the Village Oaks building because of the good visibility at that location and, the fact, that the business's current location will be unavailable as the property is to be redeveloped.

Steve Coates, representative of property management company Coates and Sowards, indicated the following:

- As with the Snap Fitness tenant space, he had faced challenges with leasing the subject tenant space to retail-oriented uses.
- The last business that occupied the subject tenant space was a travel agency and they did not succeed at that location.
- He had been advertising the property in the Clayton Pioneer and the Contra Costa Count Times.
- He had a jeweler look at the subject tenant space, but that prospective tenant was concerned about adequate visibility at that location.
- The visibility of the tenant space has been an ongoing problem.
- If Lemke Construction had been told at the time they constructed the Village Oaks building that a restriction on non-retail ground floor commercial uses would be established, they would have designed the building so that the ground floor tenant spaces are more visible, similar to the Flora Square or Rivulet buildings.

There being no further public comments, the public hearing was closed. Commission comments and questions included:

- Although we support Clayton Mind and Body moving to a new location within the Town Center, property owners and retail brokers should make every effort to lease ground floor commercial spaces to retail-oriented tenants.
- What is the length of the lease offered to Clayton Mind and Body? *Mr. Coates responded "five years."*
- It might be helpful to look at what percentage of retail sales it would take to classify a business as retail. *Director Woltering responded that staff would want to look at the code first but that his experience has been that, if more than 50% of the annual gross receipts are for retail sales, the business would then be classified as retail.*
- An introductory paragraph should be added to the Conditions of Approval on the Use Permit Notice of Decision which indicates that Clayton Mind and Body has been an existing business in the Town Center since 1998; the property owner has experienced challenges with leasing the tenant space to a successful retail tenant; and, that there will be no net decrease in ground-floor retail commercial space within the Town Center as a result of Clayton Mind and Body relocating from 1007 Oak Street to 6200 Center Street, Suite I. It is with those understandings that the Commission can approve the project, as conditioned.

- What if Clayton Mind and Body is so successful that the retail portion of their annual gross receipts exceeds 50% or they need to expand into an adjoining tenant space? *Director Woltering responded that the Use Permit would need to be re-visited by the Commission and possibly modified or discontinued.*

Commissioner Haydon moved and Vice Chair Hartley seconded a motion to approve Use Permit UP 04-08, with the findings and conditions recommended by staff, and with the findings added and conditions amended by the Commission. The motion passed 5-0.

Old Business

4. None

New Business

5. None

Communications

6A. Staff

Director Woltering discussed the status of the Rivulet project and the status of the Ruth Reed retaining wall Site Plan Review: 1) The Public Review Draft Rivulet Initial Environmental Study (IES)/Mitigated Negative Declaration (MND) document is not completed, with completion of that document dependent upon receiving final preliminary design exhibits from the applicant's design team. When that document is completed, the IES/MND will be presented to the Planning Commission for review and comments; 2) The Site Plan Review for the Ruth Reed retaining wall is expected to be presented to the Planning Commission at its September 9, 2008 meeting.

6B. Commission

The Commission indicated the following:

- We would like to see two items brought to the August 26, 2008 meeting: a study session regarding administrative review and approval for site plan review permit projects that involve construction over 500 square feet in area and/or 12 feet in height; and a study session to possibly allow limited outside commercial activities in residential areas.
- We would like to receive all future plans on 11x17 unless full-size plans are needed for legibility purposes.
- We would like receive photographs of properties related to projects we are reviewing.

Adjournment

7. The meeting was adjourned at 9:15 p.m.

Submitted by
David Woltering, AICP
Community Development Director

Approved by
Tuija Catalano
Chair

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PLANNING COMMISSION STAFF REPORT

Meeting Date: August 26, 2008

From: David Woltering 
Community Development Director

Subject: Consideration of Allowing Outside Sales in
Residential Neighborhoods (CDD 11-08)

BACKGROUND

Toward the end of May and through the month of June of this year, City staff had a series of conversations, both over the telephone and in person, with Mr. and Mrs. Lewis, who own the property at 1098 Mitchell Canyon Road, about the outside sales of produce at their property. The City of Clayton Zoning Ordinance, pursuant to Chapter 17.71 of that Code, does not allow outside sales in residential neighborhoods. The Lewis's property is located in an R-15, Residential Zoning District, in Clayton. Staff has attached photos of 1098 Mitchell Canyon Road to provide a sense of property context and extent of the garden involved.

Chapter 17.71 Home Occupation Permits of the Zoning Ordinance regulates the type and the conditions under which commercial activities may occur in a residential zone in the City of Clayton. This Chapter provides that only limited commercial activities are permitted in a residential zone, and that these activities must occur within not more than 25% of the habitable space of the home or one room. Additionally, this Chapter provides that there be no external evidence of the business activity, precluding exterior signs and outdoor display of materials and equipment. The basic intent of the Home Occupation Permit provisions is to allow only limited commercial activity and to avoid any external evidence of this activity to protect the underlying "residential character" of the neighborhood and the interests of the residents. Staff has attached a copy of Chapter 17.71 to communicate the full set of provisions that are included within this Chapter.

Mr. and Mrs. Lewis feel strongly that the activity of their two young daughters selling home grown produce from a stand on their property should be allowed. Staff has determined that the outside sales activity involved in a residential zoning district is contrary to Chapter 17.71 Home Occupation Permits of the City of Clayton Zoning Ordinance and, therefore, is not allowed. While Mr. and Mrs. Lewis emphasize the product, i.e., produce, that is being sold, and the fact that their two young daughters are selling the produce, the Home Occupation Permits section of the City's code does not narrowly focus on the type of product being sold or narrowly focus on who is selling the product. Chapter 17.71 focuses on allowing residents in residential districts in

Clayton to conduct limited commercial activities within a dwelling unit, and not allowing outside sales or external evidence of business activity.

Modifying the Home Occupation Permits Chapter of the Clayton Zoning Ordinance to allow outside sales may introduce significant and unexpected impacts to the “residential character” of neighborhoods in Clayton. Assuring equal protection and treatment to all neighbors would make it difficult to limit the type of product(s) being sold, who is selling the product(s), and the number of independent locations where these sales may occur at any one time in a given neighborhood. At the present time, “outside sales” are specifically allowed in Clayton within the City’s Limited Commercial (L-C) Zoning District. Examples of locations where the L-C District occurs in Clayton are Clayton Station and Clayton’s Town Center. In these areas, there is the expectation for commercial activity, allowance for needed signage, and requirements to provide adequate parking and access to sales areas.

Mr. and Mrs. Lewis have indicated to staff that they disagree with staff’s interpretation of the Clayton code, suggesting that the sale of their excess produce in this circumstance, with their two young daughters selling home grown produce, should not be considered a commercial activity. Staff’s response to this rationale is that it is difficult, if not inappropriate, to selectively interpret and/or enforce the City’s code provisions. The Lewis’s did submit an appeal of the staff position on this matter, yet the appeal was submitted substantially after the notified appeal deadline. As suggested by staff, Mr. Lewis subsequently, accompanied by one of his neighbors, Mr. Schwandt, attended the August 12, 2008 Planning Commission meeting to speak about the matter. Mr. Schwandt indicated his support for the Lewis family being able to continue the sales of home grown produce from their property at 1098 Mitchell Canyon Road. Mr. Lewis did not address the Planning Commission at this meeting. The Planning Commission was not able to discuss the merits of this matter at the August 12th meeting because the matter was not formally listed on the agenda; however, the Commission agreed to instruct staff to come back at a future meeting with a report on the matter so that they could discuss it.

Policy Issue

This request to allow produce sales at 1098 Mitchell Canyon Road raises a policy issue for discussion within the City of Clayton. This discussion relates to the question “Does the Clayton community want to allow outside sales in its residential neighborhoods?” Presently, as described above, Clayton code provisions do not allow outside sales in residential zoning districts.

DISCUSSION

Chapter 17.71 Home Occupation Permits of the Clayton Zoning Ordinance precludes outside sales in residential districts in the City of Clayton. This Chapter specifically describes standards for the Community Development Director to use to allow a home occupation, while “avoiding the potential of an adverse effect on the neighborhood.” The standards for use by the Community Development Director to approve a home occupation in Clayton are listed below:

Chapter 17.71 Standards for Review

1. "The home occupation shall be subordinate and incidental to the primary use of the dwelling unit for residential-purposes.
2. The home occupation shall be compatible with and not change the character of adjacent residential areas.
3. The dwelling unit shall be located in an Agricultural, Residential, or Planned Development (Residential) District.
4. The home occupation shall not use more than one (1) room, or twenty-five percent (25%) of the habitable floor area of the principal structure, whichever is greater. Garage areas and living areas within accessory structures and secondary dwelling units shall not be considered as part of the habitable floor area of the principal structure.
5. No persons shall be employed, except the applicant and members of the resident family, in the conduct of the home occupation.
6. There shall be no merchandise or services for sale, except that produced or made on the premises, and which can be shipped directly, electronically, or sold at another location.
7. There shall be no signage or exterior indication of the home occupation.
8. There shall be no outside display or storage of goods or materials.
9. The home occupation shall not create any noise, odor, dust, fumes, vibrations, electrical interference, or other interference with the residential use of adjacent areas.
10. There shall be no use of utilities or community facilities beyond that normal to the residential use of the property.
11. The home occupation shall not decrease the number or size of parking spaces below that needed to meet the minimum off-street parking requirements for the residence.
12. Delivery vehicles shall be limited to those types of vehicles, which typically make deliveries to residential neighborhoods, such as postal service, parcel deliveries, pickup; trucks, and light vans. A maximum of four deliveries per day is allowed.
13. The home occupation shall not generate client/student traffic to the residence.
14. Any chemicals or hazardous materials used or stored on the property shall not exceed that associated with normal household activities or hobby uses.
15. Any use of materials or mechanical equipment shall not exceed that associated with normal household activities or hobby uses.

It has been determined in the past with the adoption of the above standards that these provisions would help assure the protection of the character of Clayton's residential neighborhoods and the interests of the neighborhood residents. It is apparent that if there is an interest in allowing outside sales in residential neighborhoods in Clayton that Chapter 17.71 likely would need to be modified. Using the example of the outdoor produce sales activity described above at 1098 Mitchell Canyon Road, the following adopted standards are clearly not satisfied:

4. The home occupation shall not use more than one (1) room, or twenty-five percent (25%) of the habitable floor area of the principal structure, whichever is greater. Garage areas and living areas within accessory structures and secondary dwelling units shall not be considered as part of the habitable floor area of the principal structure.
7. There shall be no signage or exterior indication of the home occupation.
8. There shall be no outside display or storage of goods or materials.

11. The home occupation shall not decrease the number or size of parking spaces below that needed to meet the minimum off-street parking requirements for the residence.
13. The home occupation shall not generate client/student traffic to the residence.

As noted, the produce stand that has been placed at 1098 Mitchell Canyon Road conflicts with various review standards that presently must be satisfied to have a Home Occupation in a residential zone in the City of Clayton.

At the August 12th meeting of the Planning Commission, the Commission requested that staff report back on this matter at its August 26th meeting. Commission members indicated an interest in understanding whether the City could establish narrow parameters to specifically limit allowing outside sales in residential neighborhoods to reflect the circumstances at 1098 Mitchell Canyon Road: home-grown produce sold on the property where it is grown, with the produce being sold by children within a certain age range on weekends or other periods when there are lesser levels of activity and traffic on nearby streets. Commission members were also interested in how other communities handle this type of activity. Staff has discussed the matter with members of the City Attorney's office and conducted research on how other communities handle produce stands and similar outside sales as well as home occupations. Staff's findings from its discussions and research are provided below.

Generally, staff has found that communities that allow produce stands or roadside stands do so in agricultural zoning districts or in zoning districts in which relatively larger lot sizes are required. Often the minimum lot sizes are one acre or more. The rationale for this relationship has to do with the logistical needs and requirements for a produce stand or roadside stand, including those that follow: adequate land area and the necessary land use zoning to support crop production and sale of the produce on the same site; land area for constructing a stand to display and sell the produce as well as provide needed parking and safe access (ingress and egress) for patrons; and, adequate land area to reduce the possible negative impacts to neighbors associated with the this use – traffic, signage, noise, visual impact of the display area, etc. In more dense residential areas, without larger minimum lot sizes, it is likely that most, if not all, of these impacts could be negative and unacceptable impacts to neighbors. Staff has attached sample regulations from other communities that exemplify how customarily roadside and produce stands are not allowed in more standard suburban residential districts, but, rather, are allowed in agricultural and large lot districts, and the conditions or considerations that typically are involved.

While staff found that other communities may allow produce stands and roadside stands in agricultural zoning districts and residential zoning districts requiring relatively larger minimum lot sizes, staff did not find these uses being allowed in more standard suburban residential subdivisions in those communities. Most communities, like the City of Clayton, have regulations that limit commercial activities in these suburban residential subdivisions. These regulation, typically, are referred to as Home Occupation provisions which focus on maintaining the "residential character" of the neighborhoods and commonly do not allow outside display of goods or equipment, outside signage, minimize or preclude clients coming to the residence or any external evidence of business activity. Staff has attached a sample set of regulations for Home Occupations that includes the common provisions that the home occupation be conducted in a manner that does not include exterior evidence of the business activity.

While current Clayton regulations that do not allow outside sales (including produce stands) in standard suburban residential areas, consistent with regulations commonly in place in other communities, staff did discuss with the City Attorney the considerations and implications of allowing outside sales in suburban residential areas in Clayton. Staff included in this discussion suggestions of Commissioners for possibly narrowing this activity to certain product types or limiting who could conduct this activity (i.e., children within a certain age range). The City Attorney indicated that allowing this type of activity must forward clear governmental interests as determined by the City's legislative body and not conflict with basic Constitutional guarantees. These governmental interests would include responsibilities to assure the public health and safety interests in the community.

As described above, for those communities that allow produce stands or roadside stands, requirements/conditions are applied to address possible health and safety concerns as well as other pertinent concerns identified. Partially, it is a matter of making sure that the activity occurs on a size of property and at a location in which certain measures like those below can be assured. The following listing describes more typical requirements:

- Adequate parking and safe access (i.e., ingress and egress) to support the activity;
- That any signage, display and/or related structures and improvements associated with the activity do not impede or create unsafe conditions for pedestrian, bicycle and vehicular circulation in the area; and,
- That any required permits are obtained from other governing agencies (e.g., Health Department).

Based on this description of health and safety concerns and more typical conditions to meet these concerns, it would seem important that a property for outside sales has adequate land area and characteristics to satisfy these conditions. And, it is important to make sure that other agencies with responsibility are brought into the process.

As staff discussed with the City Attorney limiting who could conduct outside sales, with the possibility of narrowing this activity to children, it became apparent that such a limitation would conflict with "equal protection" guarantees in our Constitution. The City would be giving special privilege to one class of citizens over others. The question would be: why could not the elderly or the disabled or another class of citizens conduct outside sales? The City Attorney did suggest that a general limitation "to the occupant(s) of the residence on the property where the outside sales would be conducted" may be possible, so long as there is not a further limitation on the particular class of citizen involved.

Additionally, staff discussed with the City Attorney the possibility of limiting the type or range of products being sold on the premises in conjunction with the outside sales activity. The City Attorney indicated that this type of limitation would need to be linked to a clear governmental interest. As with the limitation on who would be conducting the outside sales, there is a concern about a conflict with "equal protection" guarantees of the Constitution. Is it equitable to the collective citizenry to allow the outside sales of such things as home grown produce to one family in a residential neighborhood, but not allow the outside sales of home made skateboards

or arts and crafts by other families in the same neighborhood? This would be a challenging discussion of the City's legislative body to find the governmental interest to allow the sale of one product over another in the same residential district. Again, though, as with the question of the possibility of narrowing who could conduct the outside sales, the City Attorney suggested that the legislative body could consider a more general category, in this case, of product(s) defined as "home grown" or "made on the premises," so long as the sale of that product(s) could be linked to a defensible governmental interest. However, this position was provided with a significant qualification that in making this determination, for example, "the raising and selling of produce in specified residential areas in the City of Clayton promotes an important governmental interest," this interest would need to be balanced with other identified governmental interests, such as the responsibility to assure various public health and safety interests.

As one considers the research conducted and the information received from the City Attorney on this matter of considering outside sales in residential neighborhoods, the following points key points of information come forward:

1. Allowing outside sales in specified residential neighborhoods must be linked to supporting defensible governmental interests, balanced with other pertinent governmental interests;
2. It is important, from a land-use perspective, to have enough land area with the location characteristics to satisfactorily address important public health and safety interests/concerns regarding adequate parking as well as safe and proper access and circulation for pedestrians, bicyclists, and motorists;
3. Limiting the type of product(s) that may be sold as part of the outside sales activity is difficult, given "equal protection" guarantees in the Constitution. It may be possible to place a broad limitation related to "product(s) grown or made on the premises," so long as there is a link to supporting a defensible governmental interest; and,
4. Limiting who is able to conduct the outside sales to a particular "class" of individuals, such as children, is not possible because it violates "equal protection" provisions of the Constitution. It may be possible to limit who could conduct the outside sales to "those who occupy the premises."

It is important to consider this information in relation to the request to allow a produce stand at 1098 Mitchell Canyon Road. Commissioners have asked about the possibility of narrowing provisions to allowing home grown produce sales by children only at this location. It should be noted that this property is within an R-15 (minimum lot size of 15,000 square feet) standard residential subdivision. The majority of the exterior yard areas of this residential property has been put into vegetable production. This property is generally fenced and gated along the public right-of-way frontage, precluding convenient access to the property. There is limited on-street parking space in the immediate vicinity of this property. The property is approximately 15,400 square feet in size and located at the southeast corner of the intersection of Pine Hollow Road and Mitchell Canyon Road. The extent of cultivation of produce on the property has intensified over time.

Summary of Key Points Related to 1098 Mitchell Canyon Road Request for Produce Stand

1. The legislative body would need to find that there is an important and defensible governmental interest that warrants allowing outside sales in certain residential areas, including at this location. This body would also need to weigh other relevant governmental interests, including public health and safety interests. The property owner is asking for a special exception/consideration. The legislative body should not consider modifying its codes to allow the request for a produce stand at 1098 Mitchell Canyon Road without considering the interests of others in the vicinity with like circumstances. Would others in the area with like property circumstances want a similar opportunity for outside sales, perhaps to sell other product(s), with those products being sold by a broad range of individuals, not just young children?
2. The size, location, and existing improvements of this property at 1098 Mitchell Canyon Road do not, from a land-use perspective, provide adequate land area or location characteristics to assure adequate parking or proper and safe access and pedestrian, bicycle, and motor vehicle circulation to support a produce stand at this location.
3. If the legislative body would be able to consider, balance, and link important governmental interests to supporting code revisions to allow a produce stand at 1098 Mitchell Canyon Road, it may be possible to narrow the product(s) being sold at that location to “home grown” or “made on the premises.”
4. Again, if the legislative body would be able to consider, balance, and link important governmental interests to supporting code revisions to allow a produce stand at 1098 Mitchell Canyon Road, it may be possible to narrow who is selling the product(s) to the occupant(s) of the property involved, but not to a narrower class such as children.

CONCLUSIONS

The current City of Clayton codes properly consider, balance, and link important governmental interests by providing appropriate protections to protect the “residential character” of residential areas within the City, while providing the opportunity for limited commercial activities within homes in these areas and avoiding external evidence of business activity and addressing anticipated health and safety concerns related to parking and traffic circulation impacts. Moreover, the City of Clayton has identified and permitted opportunities for outside sales within its Limited Commercial Zoning (L-C) District (L-C).

Should the City of Clayton desire, as an important governmental interest, to specifically permit outside produce sales within the community, staff would recommend considering drafting code revisions. These Code revisions should clarify the required standards and process for allowing this activity in existing zoning districts where, from a land-use perspective, there would typically be adequate land area and the public expectation to accommodate the activity. The Zoning Districts staff would suggest for consideration are the following: R-40 (40,000 s.f. minimum lot size); R-40 H (40,000 s.f. minimum lot size – Horses Allowed) and the A (Agricultural).

With respect to the property at 1098 Mitchell Canyon Road, staff suggests that the location and characteristics of the land are not suitable for outside sales of produce, given the need to address important governmental interests related to assuring adequate parking, access, and the public

safety and welfare associated with pedestrian, bicyclist, and motorist circulation. The City of Clayton permits the raising of vegetables at this location and appreciates the property owners' efforts to support principles of sustainability. City of Clayton representatives continue to suggest that the property owners seek other means for distribution of the produce that will come from their extensive plantings. It should be acknowledged that the extensive plantings and produce that will come from those plantings are not comparable to a lemonade stand, as has been suggested. A lemonade stand is occasional and involves minimal investment and certainly not the substantial on-going cost and care and maintenance by multiple persons that the conversion to vegetables has and continues to involve at 1098 Mitchell Canyon Road. Our suggestions include giving the produce to friends, neighbors, non-profit organizations, or affiliating with a farmer's market to be able to sell the abundant produce likely anticipated. There are certainly other means to combine the experience of growing crops on their property, with the distribution of their crops, without jeopardizing important community interests, including public health and safety interests, or seeking special consideration that would not be available to other property owners in like circumstances.

Attachments:

1. Photos of 1098 Mitchell Canyon Road
2. Chapter 17.71 of the Clayton Zoning Ordinance
3. Sample Regulations Pertaining to Roadside Produce Stands
4. Sample Home Occupation Regulations

CDD\2008\11-08.sr1



Chapter 17.71

HOME OCCUPATION PERMITS

Sections

- 17.71.010 Purpose
- 17.71.020 Administrative Review
- 17.71.030 Planning Commission Review

17.71.010 Purpose. The purpose of the home occupation permit is to allow residents in residential districts to conduct limited commercial activities within the dwelling unit. The limited commercial activities must be subordinate and incidental to the residential use of the property.

17.71.020 Administrative Review.

A. Review Procedure. The Community Development Director may approve, approve with conditions, or deny a home occupation permit upon receipt of a completed application form and payment of a fee established by resolution of the City Council, provided that any approval of a proposed home occupation shall meet the standards set forth in subsection B. Decisions of the Community Development Director shall be documented in a notice of decision. The notice of decision shall be mailed on the day of the decision to the applicant and all owners of real property, as shown on the latest equalized assessment roll, within 300 feet of the subject site.

The Community Development Director shall refer any application to the Planning Commission for a decision if, in the judgment of the Community Development Director, the application may potentially have an adverse effect on the neighborhood residents.

B. Standards of Approval. Home occupation permits approved by the Community Development Director shall meet the following standards at all times.

1. The home occupation shall be subordinate and incidental to the primary use of the dwelling unit for residential-purposes.
2. The home occupation shall be compatible with and not change the character of adjacent residential areas.
3. The dwelling unit shall be located in an Agricultural, Residential, or Planned Development (Residential) District.
4. The home occupation shall not use more than one (1) room, or twenty-five percent (25%) of the habitable floor area of the principle structure, whichever is greater. Garage areas and living areas within accessory structures and secondary dwelling units shall not be considered as part of the habitable floor area of the principal structure.
5. No persons shall be employed, except the applicant and members of the resident family, in the conduct of the home occupation.
6. There shall be no merchandise or services for sale, except that produced or made on the premises, and which can be shipped directly, electronically, or sold at another location.
7. There shall be no signage or exterior indication of the home occupation.
8. There shall be no outside display or storage of goods or materials.

9. The home occupation shall not create any noise, odor, dust, fumes, vibrations, electrical interference, or other interference with the residential use of adjacent areas.

10. There shall be no use of utilities or community facilities beyond that normal to the residential use of the property.

11. The home occupation shall not decrease the number or size of parking spaces below that needed to meet the minimum off-street parking requirements for the residence.

12. Delivery vehicles shall be limited to those types of vehicles, which typically make deliveries to residential neighborhoods, such as postal service, parcel deliveries, pickup trucks, and light vans. A maximum of four deliveries per day is allowed.

13. The home occupation shall not generate client/student traffic to the residence.

14. Any chemicals or hazardous materials used or stored on the property shall not exceed that associated with normal household activities or hobby uses.

15. Any use of materials or mechanical equipment shall not exceed that associated with normal household activities or hobby uses.

C. Appeal Procedure. Any decision of the Community Development Director regarding a home occupation permit may be appealed to the Planning Commission within ten days of the notice of decision.

17.71.030 Planning Commission Review

A. Review Procedure. In accordance with the provisions of section 17.64.110, the Planning Commission may approve, approve with conditions, or deny a home occupation permit upon receipt of a completed application form and payment of a fee established by resolution of the City Council, provided that any approval of a proposed home occupation shall meet the standards set forth in subsection B. Decisions of the Planning Commission shall be filed in accordance with the provisions of section 17.68.010.

B. Standards of Approval. Home occupation permits approved by the Planning Commission shall meet the following standards at all times.

1. Standards listed in subsection 17.71.020.B.1 through 17.71.020.B.12.

2. The home occupation shall not generate client/student traffic to the residence in excess of six (6) clients/students per day, unless the number is reduced by the Planning Commission. On Saturdays, client/student traffic may only occur between 9:00 a.m. and 5:00 p.m.) Client/student traffic is prohibited on Sundays.

3. Any chemicals or hazardous materials used or stored on the property, beyond that associated with normal household activities or hobby uses, shall not create a hazard for the applicant or neighborhood residents.

4. Any use of materials or mechanical equipment beyond that associated with normal household activities or hobby uses, shall not create a nuisance for neighborhood residents.

C. Appeal Procedure. Any decision of the Planning Commission regarding a home occupation permit may be appealed to the City Council in accordance with the provisions of section 17.68.020. (Ordinance 357, 2001)

MONROE COUNTY, WISCONSIN

Local Land Use Regulations for Roadside Produce Stands and Signs

Monroe County Zoned Towns

- ♦ Adrian
- ♦ La Grange
- ♦ Leon
- ♦ Little Falls
- ♦ New Lyme
- ♦ Oakdale
- ♦ Ridgeville
- ♦ Sparta
- ♦ Tomah
- ♦ Wells
- ♦ Wilton

**Monroe County
Zoning
Administrator**
14307 CTH B, C-21A
Sparta, WI 54656
269-8736 or
372-8736

Monroe County Zoning Districts

General Forestry (GF)
General Ag (GA)
Exclusive Forestry (EF)
Exclusive Ag (EA)
Ag Only (AO)

Allow roadside stands
for sale of products
grown or produced on
the premises as a
principle use.

Community (C)
Allows
"principal uses
permitted in the
General
Agriculture
District" as
conditional
uses.

Residential Urban (R-1)
Business (B)
Residential Suburban (R-2)
Industrial (I)
Residential Rural (R-3)
Wilderness (W)
Interstate Business (IB)
Wetland District (W-1)
Group Development (GD)
Do not allow roadside
stands.

Conditional Uses

Contact Monroe County Zoning Administrator

- ♦ Must comply with other provisions of the district: lot width and area, yards, height, parking, loading, traffic, highway access and performance standards

Variances

Authorizes the use or development of a specific site in a manner that is prohibited by the zoning ordinance.

- ♦ Property owner must show unique, localized physical problems that give rise to hardship that can be overcome by varying the application of the ordinance without harming the purpose and intent of the ordinance
- ♦ Considered by the Board of Adjustment.

Signs

In zoned towns, the county's sign ordinance must be followed unless the town has a stricter ordinance.

- ♦ Permitted use in B, I, IB, GA, and EA
- ♦ Conditional use in AO, GF, EF, C
- ♦ Contact zoning office for a copy of the sign ordinance.
- ♦ Contact town chair for copy of the town's sign ordinance.

Please Note:

Zoned towns can enact stricter land use codes than the County's.

Contact your town chairperson or clerk to verify your allowable land uses.

Land Use Terms

Administrative Appeal:	A process to resolve disputes regarding ordinance interpretation or the reasonableness of a zoning decision.
Board of Adjustment:	The primary role of a zoning board of adjustment or appeals is to review and decide cases where there is an alleged error in a zoning decision or where a relaxation of the ordinance is sought. Zoning boards <u>may</u> be authorized to participate in three types of decision-making: administrative appeal, variance, conditional use.
Conditional Use:	A use listed in the zoning ordinance that may be allowed if found to be compatible with neighboring uses, limitations of the site, and the purposes of the ordinance. Conditions may also be attached upon approval.
Permitted Use:	A use listed in the zoning ordinance that is allowed 'by right' at all locations in a zoning district.
Police Power:	The right of government to restrict an individual's conduct or use of property in order to protect public health, safety, and welfare.
Prohibited or Unlisted Uses:	A use that is not allowed in a district because it is not expressly listed or specifically prohibited by the zoning ordinance.
Variance:	Allows a property to be used in a manner that is not permitted by the zoning ordinance.
Zoning:	The use of the public regulatory power, or police power, to specify how land may be used and developed.



MONROE COUNTY

14345 CTH B, Sparta, WI 54656

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Document created by Amy R. Schanhofer, UWEX Monroe County, CRD Educator. Based on Markham, Lynn and Rebecca Roberts, Zoning Board Handbook for Wisconsin Zoning Board of Adjustment and Appeals, 2nd Edition and Monroe County, Wisconsin Zoning Code. January 17, 2007.

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Fountain Valley Municipal Code

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Title 21 ZONING

Chapter 21.30 STANDARDS FOR SPECIFIC LAND USES

21.30.050 Produce stands.

This section provides standards for the establishment of produce stands in zoning districts where they are allowed in compliance with the provisions of Chapters 21.04 through 21.14 of this title.

(1) **Accessory Use.** A produce stand shall be allowed only as an accessory use to an agricultural production use on the same or adjacent site.

(2) **Laws and Regulations.** Produce stand operations (including agricultural operations) shall be subject to the laws and regulations administered by other city departments, Orange County Public Health Services, Environmental Health Department, Orange County Agricultural Commissioner's Office, as well as the requirements of other applicable agencies (e.g., as the Southern California Air Quality Management District, California Department of Transportation (CALTRANS), and the California Department of Food and Agriculture).

(3) **Site Plan and Information Requirements.** Produce stands intended to be in place for a minimum of ninety days shall submit the following information for approval by the director:

(A) The applicant shall provide a site plan showing:

(i) The location and dimensions of the proposed temporary buildings, parking areas (with each parking space illustrated), signs, portable restroom(s) and other temporary improvements;

(ii) Location of ingress and egress points;

(iii) Setbacks of buildings and signs from property lines;

(iv) A north (compass) orientation, adjacent streets and identifying physical features where applicable.

(B) A statement of proposed days/hours of operation and the proposed beginning and ending date of the use shall be provided with the application. The time period allowed for each produce stand shall be the same as the harvest season related to the produce grown and sold on-site.

(4) **Standards.** All produce stands shall comply with the following standards:

(A) Only one produce stand shall be allowed per parcel.

(B) The produce stand shall be setback in compliance with the regulations in the zoning district in which the use is located, but in no instance shall it be closer than twenty feet to a public street.

(C) **Parking** shall be provided as follows:

(i) A minimum of three off-street parking spaces shall be provided;

(ii) An all-weather surface (compacted crushed rock, compacted crushed asphaltic concrete, compacted crushed Portland cement concrete or equivalent surface) shall be provided for the vehicle ingress, egress, circulation and off-street parking areas;

(D) The produce stand shall be of wood frame type construction.

(E) The surface for the produce stand site shall be constructed and maintained in a manner that prevents mud/dirt from being carried onto adjacent public streets and prevents fugitive dust generation.

(F) There shall be safe ingress and egress for the site as determined by review of the public works department.

(G) Signs for produce stands shall conform to the requirements of the zoning district in which the use is

placed and for the type of sign used. All signs shall be located outside of the public right-of-way.

(H) A building permit shall be required for all structures larger than one hundred twenty square feet.

(I) No electrical wiring or hook-ups of any kind are allowed.

(J) Produce stand establishment and operation shall comply with all applicable sections of the Uniform Fire Code (UFC), Article 32.

(K) The parcel on which the produce stand is located shall be kept clean of trash and debris at all times.

(L) The parcel on which the produce stand is located shall be completely free of all evidence of the use within seven days following the termination of the use. Produce stand operations that do not comply with this standard shall be subject to a code enforcement action.

(M) If restrooms are provided, they shall conform to all applicable rules, regulations and codes of the Orange County Public Health Services, and any other requirements governing the use of these facilities.

(N) Agricultural products may not be sold from a motorized vehicle.

(O) Any graffiti on the premises shall be removed within twenty-four hours. (Ord. 1308 § 5 (part), 2000)

SECTION 47 HOME OCCUPATION REGULATIONS

47.1 PURPOSE:

Standards for controlling home occupations are set forth to minimize annoyance and inconvenience to neighboring property owners within residential areas. These standards are intended to allow reasonable and comfortable enjoyment of adjacent and nearby property by their owners and by occupants of neighboring residential dwellings, while providing opportunities for the pursuit of home-based businesses.

47.2 SPECIAL PROVISIONS FOR HOME OCCUPATIONS:

- A. Home occupations shall be permitted as accessory use in single-family residential zoning districts provided that they comply with all restrictions herein;
- B. The occupation shall produce no alteration or change in the character or exterior appearance of the principal building from that of a residential dwelling, and performance of the occupation activity shall not be visible from the street;
- C. Such use shall be incidental and secondary to the use of the premises for residential purposes, and shall not utilize floor area exceeding twenty percent (20%) of the combined gross floor area of dwelling unit and any accessory building(s) that are used for the home occupation (in no case shall the combined floor area utilized for a home occupation exceed 500 square feet);
- D. The occupation shall not employ more than one (1) person who is not a member of the household in which the home occupation occurs;
- E. Not more than two (2) patron or business-related vehicles shall be present at one time, and the proprietor shall provide adequate off-street parking on the property where the use is located;
- F. The operation of such an occupation shall be between the hours of 8:00 a.m. and 6:00 p.m. for outdoor activities, and between 8:00 a.m. and 10:00 p.m. for indoor activities;
- G. One commercial vehicle, capacity of one ton or less (according to the manufacturer's classification), may be used or parked (behind the front building line) on the property in connection with the home occupation, but said vehicle may not be parked in the street or within the front yard setback;
- H. The occupation activity shall not increase vehicular traffic flow beyond what normally occurs within a residential district, and shall not require regular and frequent deliveries by large delivery trucks or vehicles with a rated capacity in excess of one and one-half tons, according to the manufacturer's classification;
- I. There shall be no outside storage, including trailers, or outside display related to the home occupation use;
- J. No mechanical or electrical equipment shall be employed on the premises other than that which is customarily found in a home environment, and that which is customarily associated

with a hobby or avocation which is conducted solely for pleasure and not for profit or financial gain;

- K. The home occupation shall not generate noise, vibration, glare, fumes/odors, heat or electrical interference beyond what normally occurs within a residential district;
- L. The occupation shall not require the use of chemicals on the property that are obnoxious or hazardous to the welfare of the neighborhood;
- M. The home occupation shall not involve the use of advertising signs or window displays, or any other device that calls attention to the business use of the premises through audio and/or visual means;
- N. The occupation shall not offer a ready inventory of any commodity for sale on the premises unless the commodity is made/assembled on-site (e.g., arts and crafts items, handmade clothing, etc.); and
- O. The occupation shall not be harmful or detrimental to the health, welfare and safety of the neighborhood, nor shall it interfere with the comfortable enjoyment of life, property and recreation by residents of the area.

47.3 APPLICABILITY OF OTHER REGULATIONS:

Home occupations shall also be subject to any and all other provisions of local, State and/or Federal regulations and laws that govern such uses.

47.4 USES ALLOWED AS HOME OCCUPATIONS:

Subject to the provisions of Section 47.2 above, home occupations may include the following uses:

- A. Office facility of an accountant, architect, landscape architect, attorney, engineer, consultant, insurance agent, realtor, broker, or similar profession;
- B. Author, artist or sculptor;
- C. Dressmaker, seamstress or tailor;
- D. Music/dance teacher, or similar types of instruction, provided that instruction shall be limited to no more than one pupil at a time;
- E. Individual tutoring and home schooling;
- F. Millinery;
- G. Office facility of a minister, rabbi, priest or other clergyman;
- H. Home crafts, such as rug weaving, model making, etc.;

- I. Office facility of a salesman, sales or manufacturer's representative, etc., provided that no retail or wholesale transactions or provision of services are personally and physically made on the premises;
- J. Repair shop for small electrical appliances, cameras, watches/clocks, and other small items, provided that the items can be carried by one person without using special equipment, and provided that the items are not equipped with an internal combustion engine;
- K. Food preparation establishments such as cake making/decorating or catering, provided that there is no on-premises consumption by customers, and provided that all aspects of the business comply with all State and local health regulations;
- L. Registered Family Homes (see definition in Section 49), in compliance with applicable State laws, which are incorporated herein by reference, with no more than six (6) children;
- M. Barber shop/beauty salon or manicure studio, provided that no more than one customer is served at a time;
- N. Swimming lessons and water safety instruction, provided that such instruction involves no more than six (6) pupils at any one time; and
- O. Bed and Breakfast Facility (see definition in Section 49), provided that no more than the number of guests that can be accommodated/served at a time in a maximum of ten (10) guest rooms.

47.5 USES PROHIBITED AS HOME OCCUPATIONS:

Home occupations shall not, in any event, be deemed to include the following uses:

- A. Animal hospitals or clinics, commercial stables, or kennels;
- B. Schooling or instruction, except swimming/water safety classes and home schooling, with more than one pupil at a time;
- C. Restaurants or on-premises food or beverage (including Private Clubs) consumption of any kind, except for limited food/meal consumption associated with the operation of a licensed registered family home or a bed and breakfast facility;
- D. Automobile, boat or trailer paint or repair shop; small engine or motorcycle repair shop; welding shop; large household appliance repair shop; or other similar type of business;
- E. Office facility for a doctor, dentist, veterinarian or other medical-related profession;
- F. On-premises retail or wholesale sales of any kind, except for items that are produced entirely on the premises in conformance with this Ordinance, and except for occasional garage sales;
- G. Commercial clothing laundering or cleaning;
- H. Mortuaries or funeral homes;
- I. Trailer, vehicle, tool or equipment rentals;

- J. Repair shops or services, except as specifically provided in Section 44.4 above;
- K. Drapery or furniture upholstery shops;
- L. Antique, gift or specialty shops;
- M. Repair shops for any items having internal combustion engines; and
- N. Any use that would be defined by the Building Code as an Assembly, Factory/Industrial, Hazardous, Institutional or Mercantile occupancy.

47.6 HOME OCCUPATION USES NOT CLASSIFIED:

- A. Any use that is not either expressly allowed nor expressly prohibited by Sections 47.4 and 47.5, respectively, is considered prohibited, unless and until such use is classified by amendment to this Ordinance by the Weatherford City Council, subsequent to an affirmative recommendation by the Planning and Zoning Board.

47.7 EFFECT OF SECTION 47 UPON EXISTING HOME OCCUPATIONS:

- A. Any home occupation that was legally in existence as of the effective date of this Ordinance and that is not in full conformity with the provisions herein shall be deemed a legal nonconforming use, and is subject to the provisions of Section 7 provided that the owner/proprietor of such home occupation register his/her business with the City within ninety (90) days of the effective date of this Ordinance, and provided that the home occupation use was not in violation of any other local, State or Federal law or regulation on that date. Proof of the existence of such home occupation use prior to the effective date of this Ordinance shall be required upon registration.
- B. Any home occupation that was legally in existence as of the effective date of this Ordinance and that conforms with (i.e., is not in violation of) the provisions herein shall be hereby authorized to continue, provided that the home occupation use is registered with the City as described in Subsection A above.

PLANNING COMMISSION STAFF REPORT

Meeting Date: August 26, 2008

From: Milan J. Sikela, Jr. 
Assistant Planner

Subject: Study Session for Administrative Approval of Minor Additions
(CDD 10-08)

BACKGROUND

Section 17.44.020.A of the Municipal Code currently requires any applicant proposing to construct an addition measuring “over 12 feet in height or encompassing an area of 500 square feet or greater” to obtain a Site Plan Review Permit from the Planning Commission (see **Exhibit**). The Site Plan Review Permit process requires that the applicant submit a \$1,000 deposit for staff processing as well as 12 sets of plans and a preliminary title report. In addition, the Site Plan Review Permit process involves staff mailing out and posting notices for the public hearing as well as preparing and presenting the staff report. It has become increasingly apparent that this process may be overly-burdensome to applicants (in terms of time, money, and energy) who are proposing to construct single-story additions that are minor in nature.

The characteristics of these minor additions include the addition being located on the interior side or rear elevation of the residence (effectively screening the addition from public areas) and involving an extension of the existing roofline (effectively providing project integration and minimizing visual obtrusiveness). Furthermore, it should be noted that the lowest height of even the shallowest roof pitch (such as a 4:12 pitch)—when combined with the height of the foundation, wall, and top plate—would still bring the height of a minor addition to 12 feet or more, thereby triggering Planning Commission review of the project. In order to avoid unfairly over-burdening applicants proposing to construct minor additions, it has been suggested that these minor additions should not have to go through the Planning Commission review process but, instead, could be reviewed and approved by staff. By allowing these more benign additions to be administratively reviewed and approved, the applicant would avoid having to go through the longer and more involved Planning Commission Site Plan Review Permit process and staff would be better able to facilitate project processing, while still assuring a thorough review of the proposal.

ANALYSIS

Staff has analyzed 34 Planning Commission-approved Site Plan Review Permits dating back to 2003. The research was conducted to analyze single-story additions based on height and area. Staff has compiled the following information for Commission review.

Height

A total of 34 Planning Commission-approved single-story additions were analyzed, based on the height of each addition. Staff notes that 22 of the 34 additions (or 64.71 %) were 16 feet in height or less. The remaining 12 (or 35.29 %) measured between 16 and 23 feet. In looking at these numbers, staff notes that a majority of the additions were less than four feet taller than the current 12-foot threshold.

Height Range (in feet)	Number of additions within height range	Percentage of total
12 - 12.99	4	11.76 %
13 - 13.99	3	8.82 %
14 - 14.99	6*	17.66 %
15 - 15.99	5	14.72 %
16 - 16.99	4**	11.76 %
17 - 17.99	3	8.82 %
18 - 18.99	1	2.94 %
19 - 19.99	0	0.00 %
20 - 20.99	2	5.88 %
21 - 21.99	3	8.82 %
22 - 22.99	1	2.94 %
23 - 23.99	2	5.88 %
Total	34	100.00 %

*Two of the six projects measuring 14 feet in height are detached structures.

**One of the four projects measuring 16 feet in height is a detached structure.

Area

Staff also analyzed 34 Planning Commission-approved single-story additions, based on the area of each addition. Staff found that the additions were evenly distributed between those additions measuring less than 500 square feet, 500 to 750 square feet, and over 750 square feet with approximately one-third of the additions falling under each of the three area categories.

Area Range (in square feet)	Number of additions within area range	Percentage of total
< 500	12	35.30 %
500 - 750	11	32.35 %
> 750	11	32.35 %
Total	34	100.00 %

Options

Based on the above analyses, staff has listed the following options for Commission consideration.

Option A

Leave the Site Plan Review Permit thresholds as they are currently. The benefit of keeping the thresholds at 500 square feet in area and 12 feet in height are that the Commission would have more proposals brought before them and, as a result, would be better able to more directly review and regulate development within the City. The inherent drawbacks with leaving the thresholds as they currently are, as stated above, would be greater cost, time, and personnel resources by the applicant and the City.

Option B

Increase the threshold height. The threshold height could be increased to 13 or 14 feet; however, staff notes that detached accessory structures are allowed to be up to 16 feet in height. The benefit of raising the threshold height would be, as stated above, decreased cost, time, and resource impacts to the applicant and increased facilitation of project processing by staff. The drawbacks would be that the Commission would not be able to review minor additions and, therefore, would not be able to regulate the smaller developments that occur within the City below the current threshold level.

Option C

Another alternative to consider is increasing both the threshold height and area. The threshold height could be increased, as discussed in Option B, as well as the threshold area. Staff notes that detached second dwelling units are allowed to be administratively reviewed and approved up to 750 square feet in area. The benefit of raising the threshold height and area would be an even further decrease in cost, time, and resource impacts to the applicant and even faster facilitation of project processing by staff. Of course, the drawbacks would result in even less minor additions being reviewed by the Commission, thereby further reducing the Commission's ability to regulate development.

CONCLUSION

Staff concludes that the Planning Commission review the information and options related to Site Plan Review Permit thresholds and provide direction to staff.

EXHIBIT

Chapter 17.44 of the Clayton Municipal Code (Site Plan Review)

CDD\2008\10-08.sr1

Chapter 17.44

SITE PLAN REVIEW

Section:

17.44.010	Purpose
17.44.020	Site Plan Review Permit Required
17.44.030	Exemptions
17.44.040	Standards of Review

17.44.010 Purpose. The purpose of the Site Plan Review is to ensure that the design of all new development is compatible with Clayton's character and that the design and location of new development does not impose significant negative impacts on neighboring property owners and/or occupants. To achieve this purpose, the community's character and any specific neighborhood impacts shall be balanced with an owner's right to develop property. (Ord. 311, 1994) (Ord 325, 1996)

17.44.020 Site Plan Review Permit Required. A Site Plan Review Permit shall be required in any zoning District for the design of all new development within the City (new construction, remodeling, additions, etc.) that meets any of the following criteria:

A. Construction (enclosed or unenclosed) over 12 feet in height or encompassing an area of 500 sq. ft. or greater;

B. Construction over four (4) feet in height (other than fences) encompassing an area of ten (10) square feet or greater located within the upper two-thirds of a slope which exceeds either: (Ord 375, 2004)

1. A grade equal to or greater than 1 foot vertical to 4 feet horizontal, or

2. A grade change greater than ten (10) feet.

C. Any balcony, deck or other similar structure, whose floor elevation is over 4 feet in height from the underlying grade encompassing an area of 10 sq. ft. or greater;

D. Retaining walls needing a building permit and observable from public streets and/or sidewalks;;

E. Construction of more than one (1) exempt structure (as herein defined) within any 5-year time period;

F. Construction that, in the judgment of the Community Development Director, does not comply with the purpose of this Chapter as stated above or with the standards of review as stated herein. (Ord 311, 1994, Ord. 375, 2004, Ord 325, 1996)

17.44.030 Exemptions. Any new development meeting one of the following characteristics shall be exempt from a Site Plan Review Permit. Such exempt development may directly apply for a building permit which is administratively reviewed by staff.

A. Construction not meeting one of the criteria listed above;

B. Construction receiving specific design authorization pursuant to an approved:

1. Development Plan Permit;

2. Vesting Tentative Map;

3. Development Agreement. (Ord. 311, 1994)

C. Second dwelling units administratively approved in accordance with Section 17.47.020. (Ord 373, 2004)
(Ord 325, 1996)

17.44.040 Standards of Review. The factors to be reviewed by the Planning Commission (or City Council upon appeal) shall include, but are not limited to:

A. Conformity with the General Plan and any applicable Specific Plan (e.g. Town

Center, Marsh Creek Road).

B. Conformity with any applicable City adopted architectural and/or design standards (e.g. Oakhurst Country Club, Oakwood Subdivision, Clayton Station).

C. Preservation of general safety (e.g. seismic, landslide, flooding, fire, traffic).

D. Maintenance of solar rights to adjacent properties.

E. The reasonable maintenance of the privacy of adjacent property owners and/or occupants.

F. The reasonable maintenance of existing views of adjacent property owners and/or occupants.

G. The new development, taken as a whole, need not be identical, but should be complementary with the adjacent existing structures in terms of materials, colors, size, and bulk. (Ord. 325, 1996; Ord. 311, 1994, Ord 325, 1996)