

Minutes
City of Clayton Planning Commission Special Meeting
Tuesday, August 26, 2008

Call to Order

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

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

Absent: None

Staff: Community Development Director David Woltering
City Attorney Dan Adams
Assistant Planner Milan Sikela, Jr.

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.

Chair Catalano moved and Commissioner Armstrong seconded a motion to approve the minutes from the meeting of August 12, 2008, as amended. The motion passed 5-0.

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.

The study session was opened. Director Woltering presented the staff report.

The Commission asked questions for clarification of staff as follows:

- How many days per year is the produce being sold at 1098 Mitchell Canyon Road? *Director Woltering indicated that the property owner had informed him that produce was sold 20 or more days per year.*
- Does the City's code define commercial activity? *Director Woltering responded that the code does not specifically define commercial activity, but that staff would refer to a Webster's dictionary definition for guidance and that an exchange of goods or revenue would typically be involved.*
- Do garage sales or yard sales require a Use Permit? *Director Woltering indicated that garage sales or yard sales do not require a Use Permit, nor, however, are permitting requirements addressed for these activities in the code.*

- Do Home Occupation Permits apply to occupations, not to temporary outdoor uses such as garage sales? *Director Woltering indicated that the Home Occupation Permit section does not distinguish between the type of activities, only that outside commercial activity is not permitted.*
- Do we know if the Home Occupation Permit process was intended to apply to lemonade stands and garage sales? *Assistant to the City Manager Laura Hoffmeister responded that, when the wording was drafted for Chapter 17.71—the Chapter related to Home Occupation Permits—the intention was to address home-based businesses in a thoughtful manner. Lemonade stands and garage sales were only discussed in passing. Prior to the establishment of Chapter 17.71, the policy of the City was that three events per year or less was considered infrequent and did not constitute a business activity. So if an activity occurred three times a year or less, no permit was needed. In the instance that the City received a complaint about the activity, code enforcement would be applied. The Assistant to the City Manager noted that the City had previously shut down a holiday boutique activity that involved outside sales of various goods in a residential neighborhood.*
- So has the City code enforced garage sales? *Assistant to the City Manager Hoffmeister indicated that if the activity occurred less than three times a year, it was not code enforced. However, if staff received complaints about the activity, as in the case with the holiday boutique, then appropriate code enforcement measures would be initiated.*
- Was the complaint based on the sale of produce at 1098 Mitchell Canyon Road or the traffic generated by the activity? *Director Woltering indicated that the complaint related to traffic impacts.*
- Would a permit be required from the Health Department? *Director Woltering indicated that it is his understanding that the produce could be sold without a permit from the Health Department as long as the produce was not processed (cut, diced, canned, etc.).*
- What is the governmental interest in statutes such as the Home Occupation Permit regulations? *Director Woltering answered that preservation of the residential character of Clayton's neighborhoods is the objective.*
- In years past, the City shut down a residential business that involved the sales of garden statuary.
- Could a Variance be used to allow the sales of produce from 1098 Mitchell Canyon Road? *Director Woltering responded that a Variance could not be used since a Variance applies to requested deviations from required development standards, and not requested deviations to uses of land. The matter at 1098 Mitchell Canyon Road relates to the use of land.*
- Did the initial complaint have to do with traffic issues? *Director Woltering answered "yes".*

There being no further questions of staff, Chair Catalano opened the public hearing.

Charles Van Brusselen, 5851-A Pine Hollow Road, indicated the following:

- Chapter 8.08.010 of the Municipal Code addresses the violations that have occurred at 1098 Mitchell Canyon Road.
- The activities occurring at 1098 Mitchell Canyon Road are nuisances since they create traffic, parking violations, and noise.
- A tractor has been located in visible area of the lot, which violates the City's open storage regulations.

Jon Van Brusselen, 5851 Pine Hollow Road, indicated the following:

- I am impacted by the activities occurring at 1098 Mitchell Canyon Road. Most of the people in support of the produce stand do not live right across the street from it. I am impacted daily by these activities.

- I consider the property at 1098 Mitchell Canyon Road to be a mess. They have a ladder, four-foot sprinklers, lumber rack, trailer, tractor, and an inoperable vehicle on the property. I have to look outside my window and see this across the street.
- The things that have been occurring at 1098 Mitchell Canyon Road are Code violations.
- During the winter when the vegetables are not growing, the front and exterior side yard areas look terrible.

Norma Alexander, 5856 Four Oaks Lane, indicated the following:

- I've purchased vegetables from the property owners of 1098 Mitchell Canyon Road.
- The two girls should be encouraged to sell vegetables.
- While traffic is a concern at times in this area, the additional traffic associated with the girl's selling vegetables is not an issue.
- I urge the Planning Commission to make it possible for the outside sales to occur at the subject property.

Mike Lewis, 1098 Mitchell Canyon Road, indicated the following:

- This started out as something for my daughters to do.
- We had no intention of visually impacting the neighborhood.
- He hopes that there will be some way for Katie and Sabrina to continue their vegetable sales.

Commission comments and questions to Mr. Lewis included:

- How often do you sell produce? *Mr. Lewis responded that produce was sold approximately 20 days per year.*
- Do any produce sales occur during the winter? *Mr. Lewis responded that produce sales only occurred during the spring and summer.*
- What are the hours and days that you sell produce? *Mr. Lewis responded that produce typically has been sold from 8 a.m. to noon, during the weekends.*
- How much money do you make on the produce? *Mr. Lewis responded "approximately \$400 to \$500 a year."*
- Are you aware of any traffic issues related to the produce sales? *Mr. Lewis responded that the vehicles either park on the street or pull into his driveway.*
- Have you could considered joining the Farmers' Market. *Mr. Lewis responded that he did not know what was required and that he preferred to stay on his property.*
- Do you have any signage? *Mr. Lewis responded that no signs are posted on the site.*
- Have you limited the size of the produce sales table or the area where the produce is sold? *Mr. Lewis responded that the table where produce has been sold is the size of a small card table so it would be hard to reduce it down further than where it already is.*

Katie Lewis, 1098 Mitchell Canyon Road, gave to the Commission a copy of a petition that was signed in favor of the produce stand and indicated that 30 signatures were collected.

Lynn Hadley, 527 Hamburg Circle, indicated the following:

- Appreciates the City for its work on this matter.
- Commends the children for their efforts to sell produce.
- Realizes that the City's Code cannot be selectively enforced.
- Suggested that the older girl might be able to use this issue as a beneficial civics lesson.
- Hopes there can be a reasonable resolution to the matter.

Randy Jaffe, 851 Coachman Place, expressed support for allowing produce sales at 1098 Mitchell Canyon Road, indicating the following:

- Shutting down the produce stand is not consistent with the spirit of the community.
- There are many benefits to the produce stand activity, including the following:
 - Increases opportunities for community contacts and relationships;
 - Emphasizes the bucolic nature of the community; and,
 - Supports the upscale nature of the community.
- It is the duty of the Planning Commission to determine an appropriate solution for this issue.

Colleen Culver-Jaffe, Landscape Architect, 851 Coachman Place, expressed support for allowing produce sales at 1098 Mitchell Canyon Road. She indicated the following:

- The produce stand provides an opportunity for connection.
- The produce sales are good for the children and the character of the community.
- It is her belief that a Variance could be used to resolve this matter.

Teresa Bentley, 5868 Four Oaks Lane, expressed support for allowing produce sales at 1098 Mitchell Canyon Road, indicating the following:

- She admires the garden and the work of the girls.
- There may be a traffic issue at times in the vicinity.

Dana Valory, 5800 Pine Hollow Road, indicated that the City should separate the issue of produce sales from the issue of outdoor storage of materials and items. She indicated that she supports the produce stand.

John Roskelley, 5675 Pine Hollow Road, expressed support for allowing produce sales at 1098 Mitchell Canyon Road and indicated the following:

- His family has been in Clayton since 1946.
- The City should approve a waiver to allow produce sales from the site.
- There has been talk about preserving the residential character; people going to people's homes enhances a sense of residential character.
- The produce sales are a wholesome activity.

Sam Albertson, (did not state address at meeting or list address on speaker card), expressed support for allowing produce sales at 1098 Mitchell Canyon Road. His comments included the following:

- The community should be more tolerant of activities like the produce sales.
- If the code does not currently allow produce sales in residential neighborhoods - fix it!

Barbara Vermuele, 1352 Indiana Drive, Concord, expressed support for allowing produce sales at 1098 Mitchell Canyon Road and indicated the following:

- Never noticed a traffic problem at the subject property.
- It is lovely to look at a property being used for sustainable agriculture.
- It is a good lesson for children to learn the value of entrepreneurial endeavors.

Richard Mitchell, 74 Nottingham Place, expressed support for allowing produce sales at 1098 Mitchell Canyon Road and indicated the following:

- He moved to Clayton in 1993.
- When the vegetable garden and flowers are in full bloom, the property visually accentuates our community in a beneficial way.
- Diablo Magazine came to the site two years ago to do a photo shoot.

There being no further public comment, the public hearing was closed and Chair Catalano convened the meeting at 8:15 p.m. for a brief break.

Chair Catalano reconvened the meeting at 8:30 p.m.

Chair Catalano read from California Government Code Section 65906 that a Variance cannot be applied to a “use or activity” which is not expressly allowed by the applicable zoning regulations. Therefore, a Variance could not be approved as a means to allow outside commercial sales at 1098 Mitchell Canyon Road. City Attorney Dan Adams confirmed this position.

Vice Chair Hartley indicated the following:

- The City did not do anything wrong by following-up regarding the outside sales occurring at 1098 Mitchell Canyon Road. The City has an obligation to follow-up on a complaint. It would have been wrong if the City simply ignored the matter.
- The letters written by staff to the property owners were very thorough and explained that the outside commercial sales being conducted at the property did not meet the requirements of a Home Occupation Permit.
- He believes that sales of produce at the subject property as well as lemonade stands are part of the “residential character” of the City. He stated that these are traditions that are as old as the United States itself.
- Chapter 17.71 of the Clayton Municipal Code—which address Home Occupation Permits—does not apply to the situation at the subject property since the kids selling the produce are not involved with an “occupation.” The occupation of the children is being kids, and you do not need a permit for that.
- The Notice of Violation should be withdrawn.
- If there are other neighborhood impacts being created by the outside commercial sales at the subject property such as neon signs, traffic congestion, or safety issues, then we already have established regulations, i.e., nuisance regulations, that would address these violations.
- Chapter 17.71 is vague and did not consider such things as produce stands, lemonade stands, and garage sales. We need to clarify Chapter 17.71.
- Chapter 5.04 of the Municipal Code recognizes the temporary nature of garage sales.
- We should draft an exemption to Chapter 17.71 that indicates that a Home Occupation Permit should not be required for such things as garage sales, lemonade stands, and produce stands.
- We should craft exemption regulations for produce stands that require the produce to be grown on the property and put limits on the frequency of the sales.
- Chapter 17.71 does not apply to the issue at 1098 Mitchell Canyon Road.

Commissioner Armstrong asked Vice Chair Hartley if he believes the prohibition on outside commercial sales at the subject property should be withdrawn.

Vice Chair Hartley answered “yes.”

Commissioner Haydon asked staff if the City was authorized to rescind the Notice of Violation and implement an amendment of the Municipal Code to allow produce stands. *City Attorney Dan Adams indicated that the City could research this issue.*

Commissioner Armstrong indicated that, if the City allowed produce sales at the subject property under an exemption, the City would have no way to condition the project for location of the produce stand, signage, and other project-related issues.

Chair Catalano indicated that she had concerns with allowing sales of produce at the subject property.

Vice Chair Hartley indicated that the City should craft some sort of document that exempts sales of produce from the subject property during the next one or two months which is the remainder of this year's growing season.

Commissioner Haydon indicated the following:

- The City needs to define the term "occupation".
- Currently, the sales of produce from the subject property is not allowed. The City should amend the Municipal Code to allow such uses.
- There is an interest among the citizens of Clayton to preserve this type of activity within the residential neighborhoods of the City. Our challenge is to develop a method of allowing these types of uses.
- We could amend Chapter 17.71 to allow these types of uses, under certain conditions.
- We would need to regulate the frequency of sales and the types of goods that could be sold.
- Some of the more specific regulations to allow produce sales from residential property would be that the produce has to be grown on site and sold by the owners or occupants of the property.
- We need to ensure that these uses are not abused and that the City will not be developing land uses that are not legally defensible.
- We should allow specified outside sales in residential neighborhoods without a permit, but our Municipal Code needs to specifically address what these uses are, and they must be clearly defined.

Commissioner Johnson indicated the following:

- We are here for a study session and not to review any specific project.
- I believe the Farmers' Market is a viable short-term solution.
- I researched the Farmers' Market and the property owners of the subject property could be included in the Farmers' Market within a week or two and it would cost \$10 per day to participate in the Farmers' Market. That way the produce would not be wasted and could be sold.
- I am not sure we have the authority to overturn the decisions made by the City in addressing the Code violations at the subject property.

Chair Catalano indicated the following:

- I agree with Commissioner Hartley that this issue is not addressed clearly within Chapter 17.71 but I disagree that these uses should be allowed without conditions.
- I am concerned with allowing produce sales from the subject property as a permitted use.
- I believe allowing these types of uses may open residential areas up to other detracting uses such as car washes.

Vice Chair Hartley indicated the following:

- This issue is not an action item so we cannot take a vote on it tonight.
- I get the sense that we all feel this type of use should be allowed to some extent.

- We should implement an amendment of the Municipal Code to allow this use. However, this takes many months.
- In the meantime, and in order to provide some immediate action, and since there are only two months left in the growing season, we should craft a document to allow this use.
- I understand the City has concerns that allowing this use may mean that lemonade stands, produce stands, and garage sales would begin to emerge throughout neighborhoods in Clayton, but I just do not see that happening.

Commissioner Armstrong indicated the following:

- A short-term solution would be selling the produce at the Farmers' Market.
- We should withdraw the prohibition that was issued, although I do not know how that would work.

Vice Chair Hartley indicated the following:

- Since the Community Development Director issued the Notice of Violation, the Director can also revoke the Notice of Violation.
- Would rescinding the Notice of Violation require Planning Commission approval? *Director Woltering indicated that he would have to research the matter.*

City Attorney Dan Adams indicated that Vice Chair Hartley's concerns have merit with regards to the application of Municipal Code Chapter 17.71 to the subject produce stand.

Chair Catalano indicated that she felt the Home Occupation Permit process was an option to deal with this issue on an interim basis, provided that there would be no external activity.

Vice Chair Hartley indicated that he was not sure what we are worried about here; we don't have any evidence that this is occurring all over town.

Commissioner Haydon indicated that he still had concerns around traffic impacts related to produce sales at the subject property.

Commissioner Johnson indicated the following:

- I have concerns with the actual location of the stand.
- I also have concerns related to the liability implications of the two children being out near the street selling produce with vehicles traveling so close by.

Commissioner Armstrong indicated the following:

- On weekdays, traffic is severely congested due to vehicles traveling to and from the Mount Diablo Elementary School.
- We have greater traffic problems related to the gravel trucks traveling along Mitchell Canyon Road than any circulation impacts caused by the property owners' produce stand.
- Traffic is not an issue and should not have been a complaint.

Vice Chair Hartley asked staff if it was within the Director's purview to enter into an agreement with the property owner to temporarily allow the sales of produce at the subject property. *Director Woltering indicated that he did not know that to be within his purview, but that he would consult with the City Attorney. After a brief consultation with the City Attorney, Director Woltering responded that such an agreement could be explored.*

Vice Chair Hartley indicated that the agreement should take into consideration the frequency, hours of operation, traffic, parking, signage, and that the produce be grown on-site and sold by the occupants. *Director Woltering indicated that he understood the Commission wanted the produce sales limited to weekends only, between 8 a.m. and 3 pm. He added that staff would research the process related to the agreement, and that staff could begin crafting a draft Ordinance for Commission review to address the long-term solution for possibly providing parameters for specified outside sales in residential neighborhoods. He anticipated that the time frame would be approximately six months for preparation and adoption of a formal Code amendment.*

Commissioner Armstrong indicated that only homegrown and homemade items should be allowed to be sold.

Commissioner Haydon indicated the following with respect to preparing the draft Ordinance to consider allowing the occasional outside sales in residential neighborhoods:

- The parameters need to be clearly defined.
- We should not be expanding the scope of the issue since Home Occupation Permits cover much of this already.
- Staff should look at other cities' regulations to learn how the more occasional outside sales activities in residential areas are addressed.

Director Woltering indicated the following:

- The City Attorney and myself would need to review these issues further.
- According to the direction provided by the Commission for the draft Ordinance, staff would suggest criteria for consideration so that a permit is not required for specified occasional outside commercial sales in residential neighborhoods.

Chair Catalano indicated that the wording in an agreement to allow produce sales at 1098 Mitchell Canyon Road should state that the creation of this agreement is not precedent setting.

Chair Catalano and other Commissioners asked Director Woltering if a motion was needed regarding the direction being provided. Director Woltering indicated that a motion would not be needed, and that he would meet with the City Attorney to follow-up on the matter. The consensus understanding of the Planning Commission was that the Community Development Director and the City Attorney would explore the possibility of pursuing an interim measure with specified conditions to allow the produce stand at 1098 Mitchell Canyon Road to re-open and, separately, they would begin work on a draft ordinance for consideration to allow occasional outside sales in residential neighborhoods.

- 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.

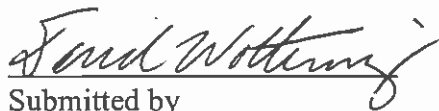
By consensus, the Planning Commission continued CDD 10-08 to the next regular meeting on September 9, 2008. The motion passed 5-0.

Communications

- 6A. Staff – None.
6B. Commission – None.

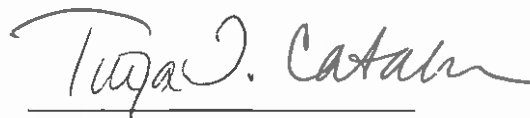
Adjournment

7. The meeting was adjourned at 9:41 p.m.



Submitted by
David Woltering, AICP
Community Development Director

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Approved by
Tuija Catalano
Chair