



Agenda
Planning Commission Meeting
7:00 P.M. on Tuesday, September 9, 2008
Clayton Community Library Meeting Room
6125 Clayton Road, Clayton

CALL TO ORDER, ROLL CALL, PLEDGE TO THE FLAG

Administrative

- 1A. Selection of back-up Chair.
- 1B. Review of agenda items.
- 1C. Commissioner Haydon to report at the September 16, 2008 City Council meeting.

Public Comment

Approval of Minutes

- 2. Approval of minutes from the meeting of August 26, 2008.

Public Hearings

- 3. **SPR 11-07, Site Plan Review Permit, Ruth Reed**, 1816 Ohlone Heights, APN 118-392-001. A request for a Site Plan Review Permit for an existing retaining wall, screen fence atop the retaining wall, and landscape and related improvements in the exterior side yard of the subject property.
Proposed Action: Approval, with conditions.

Old Business

- 4. None

New Business

- 5. **CDD 10-08, City of Clayton.** Study session item regarding possible amendments 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: Update regarding August 26, 2008 Planning Commission meeting study session related to "possible amendment of the Clayton Municipal Code to allow outside sales in residential areas."
- 6B. Commission

Adjournment

7. The next meeting of the Planning Commission is scheduled for **Tuesday, September 23, 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 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? *Director Woltering indicated that the property owner had informed him that produce was sold 20 or more days per year.*
- 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.*
- 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 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 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."*
- Any traffic issues related to the produce sales? *Mr. Lewis responded that the vehicles either park on the street or pull into his driveway.*
- You could consider joining the Farmers' Market.
- 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:

- My 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:

- We 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.

Chair Catalano read from the State Government Code that a Variance cannot be applied to a "use or activity" which is not 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 Ed 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.

Commissioner Hartley answered “yes.”

Commissioner Haydon asked staff if the City could 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 Farmer’s 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 is 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 about the of clarity of the application of Chapter 17.71 of the Municipal Code to the subject produce stand have merit.

Chair Catalano indicated that she felt the Home Occupation Permit process was an option to deal with this issue on an interim basis.

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 to possibly providing parameters for specified outside sales in residential neighborhoods. He anticipated that the time frame would be approximately six months to allow time 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. Mr. 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 11-08 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

Approved by
Tuija Catalano
Chair

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PLANNING COMMISSION STAFF REPORT

Meeting Date: September 9, 2008

From: David Woltering, AICP, Community Development Director 
Milan J. Sikela, Jr., Assistant Planner 

Subject: Ruth Reed Site Plan Review (SPR 11-07)

REQUESTS

A request for a Site Plan Review Permit for an existing retaining wall, screen fence atop the retaining wall, and landscape and related improvements in the exterior side yard of the subject property.

PROJECT INFORMATION

Applicant/Location: Ruth Reed
1816 Ohlone Heights
Clayton, CA 94517
APN 118-392-001 (See **Exhibit A** for Location Map)

General Plan Designation: Medium Density - Single Family Residential (3.1 to 5.0 units per acre). This proposal complies with the *General Plan* designation.

Zoning: Planned Development.

Environmental Review: Categorically exempt per Section 15303(e), Class 3 of the State CEQA Guidelines.

Public Notice: On August 29, 2008, a public hearing notice was posted on the notice boards, mailed to property owners within 300 feet of the site, and faxed to the newspapers. Comments received by staff have been incorporated into the text.

Agency Referrals: No comments were provided by the City Engineer, City Stormwater Manager, or Contra Costa County Building Inspection Department.

Authority: Section 17.44.020 of the Zoning Ordinance authorizes the Planning Commission to approve a Site Plan Review Permit in accordance with standards in Section 17.44.040.

BACKGROUND

On April 24, 2007, the Planning Commission approved a Site Plan Review Permit for design review of the subject retaining wall and a fence atop the retaining wall. On the same date, a companion Variance to allow the 13-foot combined retaining wall/fence structure to exceed the maximum height limit for walls/fences was denied by the Planning Commission. The applicant subsequently appealed the denial of the Variance to the City Council. On August 7, 2007, the City Council denied both the Variance (upholding the Planning Commission's denial) and the Site Plan Review Permit (overturning the Planning Commission's approval). The City Council's actions were formalized by Resolution No. 40-2007 on September 4, 2007. The rationale for the City Council's denial was largely related to the massing, i.e., obtrusiveness, of the fence atop the retaining wall and the property owner's desire at that time not to offset the fence by three feet from the retaining wall to address this concern.

Recently, the property owner/applicant has agreed to replace the six foot high, solid board fence with a five foot high, open, wrought iron fence and offset the new fence by three feet from the retaining wall. Additionally, the property owner has agreed to modify the landscape materials that were previously installed in this area of her property to feature evergreen plant materials to assure appropriate screening and softening of the wall and fence. Moreover, the property owner has agreed to enter into an on-going maintenance agreement to better ensure the proper appearance of her property in this area over time. Accordingly, staff requested, and the property owner has submitted, revised plans for this Site Plan Review Permit. The modifications described are to address the previous concerns of the Planning Commission and the City Council and to bring the height of the retaining wall in relation to the fence into compliance with the City's wall/fence height regulations as well as to provide appropriate screening of the wall/fence. Complete project plans were submitted to the Community Development Department on August 22, 2008 (see **Exhibit B**).

DISCUSSION

The Municipal Code requires that the height of retaining walls and fences shall be measured as one structure, as indicated by Section 17.36.075.G of the Zoning Ordinance:

“The heights of fences shall be . . . measured from the lower of either the lowest adjacent ground level or the top of the footing of any retaining walls located within three (3) feet.” [Emphasis Added]

As a result, the applicant is proposing to relocate the fence further away from the retaining wall to a minimum of three feet from the wall. This will allow the retaining wall to be measured as an individual structure rather than as a combined structure with the height of the fence included, thereby bringing the retaining wall into compliance with the City's wall height regulations. Since portions of the retaining wall reach up to approximately seven feet in height, staff has provided a condition that the applicant obtain an Administrative Use Permit from the Community Development Director to allow a seven-foot wall height.

To soften the appearance of the solid board fence atop the retaining wall, the applicant is proposing to reduce the six-foot fence height to five feet and to modify the solid wood fence to a wrought iron design style. The reduction in fence height and change in fence design style will allow the fence to

appear as a separate visual component apart from the retaining wall. This, in turn, will serve to decrease the structural massing of the retaining wall which extends approximately 64 feet along the exterior side yard of the subject property. Staff suggests that the wrought iron fence use a gauge and quality that matches wrought iron fences throughout the Oakhurst subdivision.

The property owner is proposing to modify the existing landscape treatments in the area of the fence and wall by replacing deciduous plant materials with evergreen landscaping to adequately screen the retaining wall and fence. A preliminary landscape plan has been included in the project plans (see **Exhibit B, Figure 1**). In order to ensure that adequate landscaping is planted (in terms of the quantity and type of foliage) to effectively screen the wall and fence, staff has provided a condition that a landscape and irrigation plan be submitted to the Community Development Director for review and approval. Furthermore, a condition has also been provided that the applicant enter into a landscape and maintenance agreement to establish performance criteria and ensure the ongoing maintenance of the on-site landscaping. The recommended condition regarding preparation of Final Landscape and Irrigation Plans specifies certain plant material sizes and spacings. The proposed plans submitted by the property owner indicate that the Camphor trees would be 15-gallon in size. Based on information received from Mr. Hellmann (a neighbor to the subject property), and with the objective of providing more initial screening, staff has recommended 24-inch box trees instead. The Planning Commission may want to provide comments on the plant sizes that would be required.

RECOMMENDATION

Staff recommends that, based on the findings and conditions listed below, the Planning Commission approve Site Plan Review Permit SPR 11-07 for an existing retaining wall, screen fence atop the retaining wall, and landscape and related improvements in the exterior side yard of the subject property.

Proposed Findings of Approval

Based upon the evidence set forth in the staff reports, which includes relevant information from the project file, as well as testimony at the public hearing, the Planning Commission makes the following findings regarding the Site Plan Review Permit for the addition:

1. Is consistent with the General Plan designation and policies.
2. Meets the standards and requirements of the Municipal Code.
3. Complies with the Oakhurst Country Club conditions of approval.
4. Preserves general safety of the community regarding seismic, landslide, flooding, fire, and traffic hazards.
5. Maintains solar rights of adjacent properties.
6. Reasonably maintains the privacy of adjacent property owners and/or occupants.
7. Reasonably maintains the existing views of adjacent property owners and/or occupants.
8. Is complementary, although not identical with adjacent existing structures in terms of materials, colors, size, and bulk.
9. Is compatible with the neighborhood and surrounding land uses.

The above-stated findings assume acceptance and approval of the proposed conditions of approval listed below.

Proposed Conditions of Approval

These conditions of approval apply to the Proposed Schematic Landscape Plan and Proposed Landscape: Cross Section A-A', submitted by the applicant, date stamped August 22, 2008.

1. The applicant shall obtain an Administrative Use Permit from the City to allow the retaining wall to be a maximum of seven (7) feet in height.
2. The new wrought iron fence shall match the gauge and quality of wrought iron fences used throughout Oakhurst, not exceed five feet in height, and be set back a minimum of three feet from the rear edge of the retaining wall, to the satisfaction of the Community Development Director.
3. Prior to building permit issuance, Final Landscape and Irrigation Plans shall be submitted to the City for review and approval by the Community Development Director, City Engineer, and Maintenance Supervisor. The Final Landscape and Irrigation Plans shall include, but not be limited to, the following:
 - a. Camphor trees shall be 24-inch by 24-inch box in size.
 - b. Boston Ivy or Creeping Fig shall be 1-gallon in size and planted 10 inches on center
 - c. Hopseed shall be 5-gallon in size and planted 5 feet on center.
 - d. The Final Landscape Plan shall include notes and details pertaining to soil amendments, planting specifications, tree staking, erosion control measures, attachment of vines to fencing/wall, etc.
 - e. The Final Irrigation Plan shall avoid spray in favor of drip and bubble-type irrigation features. All equipment shall be identified as to type, size, and manufacturer.
4. Prior to building permit issuance, the applicant shall enter into a landscape and maintenance agreement with the City to specify acceptable performance standards for any landscaping and irrigation installed as part of the project. Any associated recordation costs shall be incurred by the applicant. This condition shall be performed to the satisfaction of the Community Development Director and the City Attorney.
5. The applicant agrees to indemnify, protect, defend, and hold harmless the City and its elected and appointed officials, officers, employees, and agents from and against any and all liabilities, claims, actions, causes, proceedings, suits, damages, judgements, liens, levies, costs, and expenses of whatever nature, including attorney's fees and disbursements arising out of or in any way relating to the issuance of this entitlement, any actions taken by the City relating to this entitlement, or the environmental review conducted under the California Environmental Quality Act for this entitlement and related actions.
6. The applicant shall exercise (i.e., apply for and be issued a building permit and initiate substantial work in reliance upon that building permit) within 12 months of the approval of this Site Plan Review Permit.

Advisory Notes

Advisory notes are provided to inform the applicant of: (a) Clayton Municipal Code requirements; or (b) requirements imposed by other agencies. The advisory notes state requirements that may be in addition to the conditions of approval.

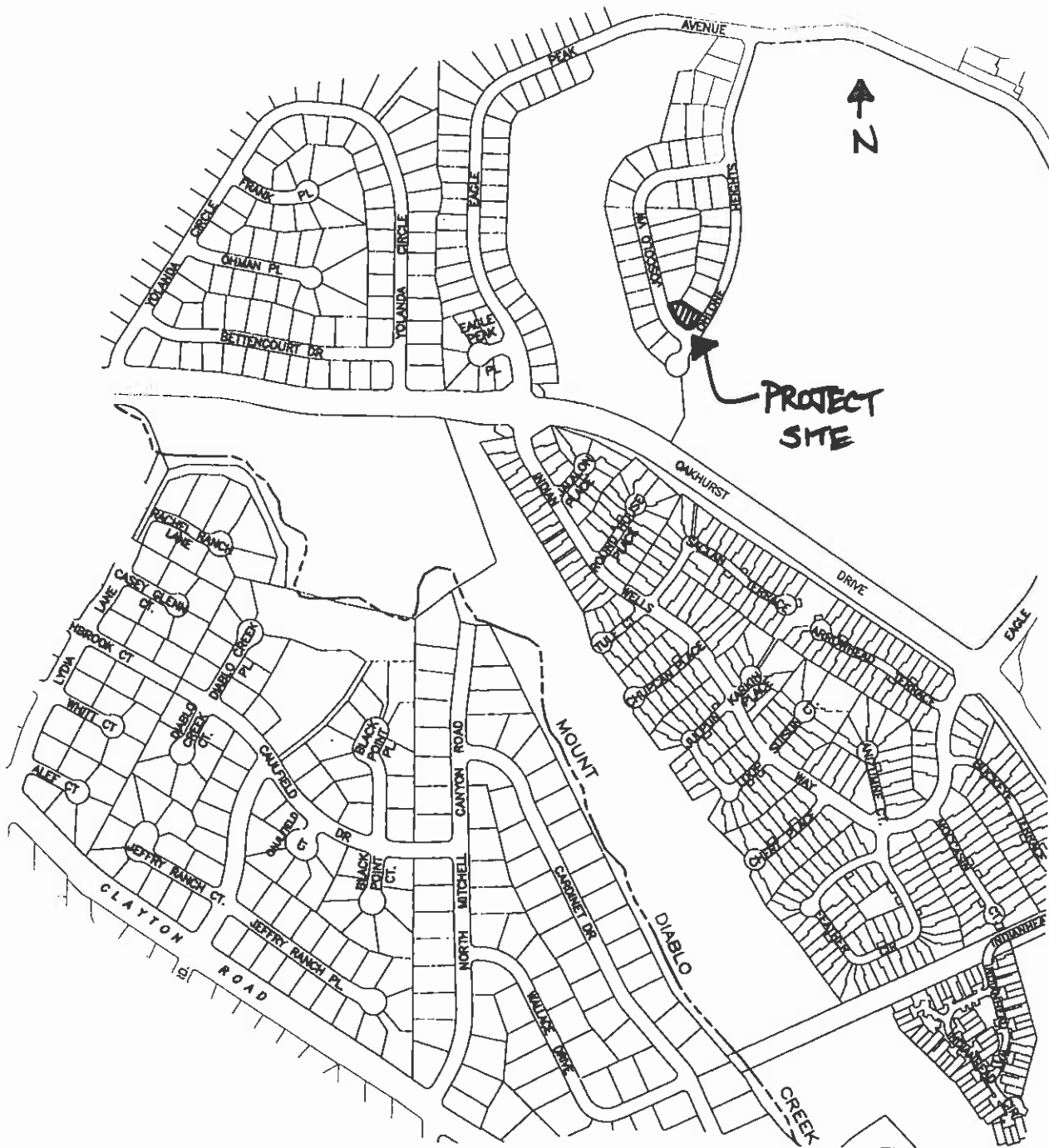
1. If additional work at the project site is necessary, the applicant shall prepare an erosion and stormwater control plan for review and approval by the City Engineer prior to obtaining a building permit.

2. If additional work at the project site is necessary, the applicant shall obtain City approval of a construction and demolition recycling plan prior to obtaining a building permit.
3. The applicant shall comply with all applicable state, county, and city codes, regulations, and adopted standards.
4. This site plan permit shall be used, exercised, or established within twelve months after the granting of the Permit, or a time extension must be obtained from the Planning Commission, otherwise the Permit shall be void (CMC §17.64.010-030).
5. All grading, construction, and other work shall occur only between 7:00 a.m. and 5:00 p.m. Monday through Friday. Any such work beyond these hours and days is strictly prohibited unless previously authorized in writing by the City Engineer (CMC §15.01.010) located at 1005 Oak Street, 925-672-9700.
6. The applicant shall obtain the necessary building permits from the Contra Costa County Building Inspection Department.
7. If the project site is located within an area subject to covenants, conditions, and restrictions (CC&R's) administered by a homeowners association, additional requirements and/or approvals may be required by the homeowners association. Before proceeding with the project, it is advisable to check with the homeowners association to ensure any applicable requirements are met.

EXHIBITS

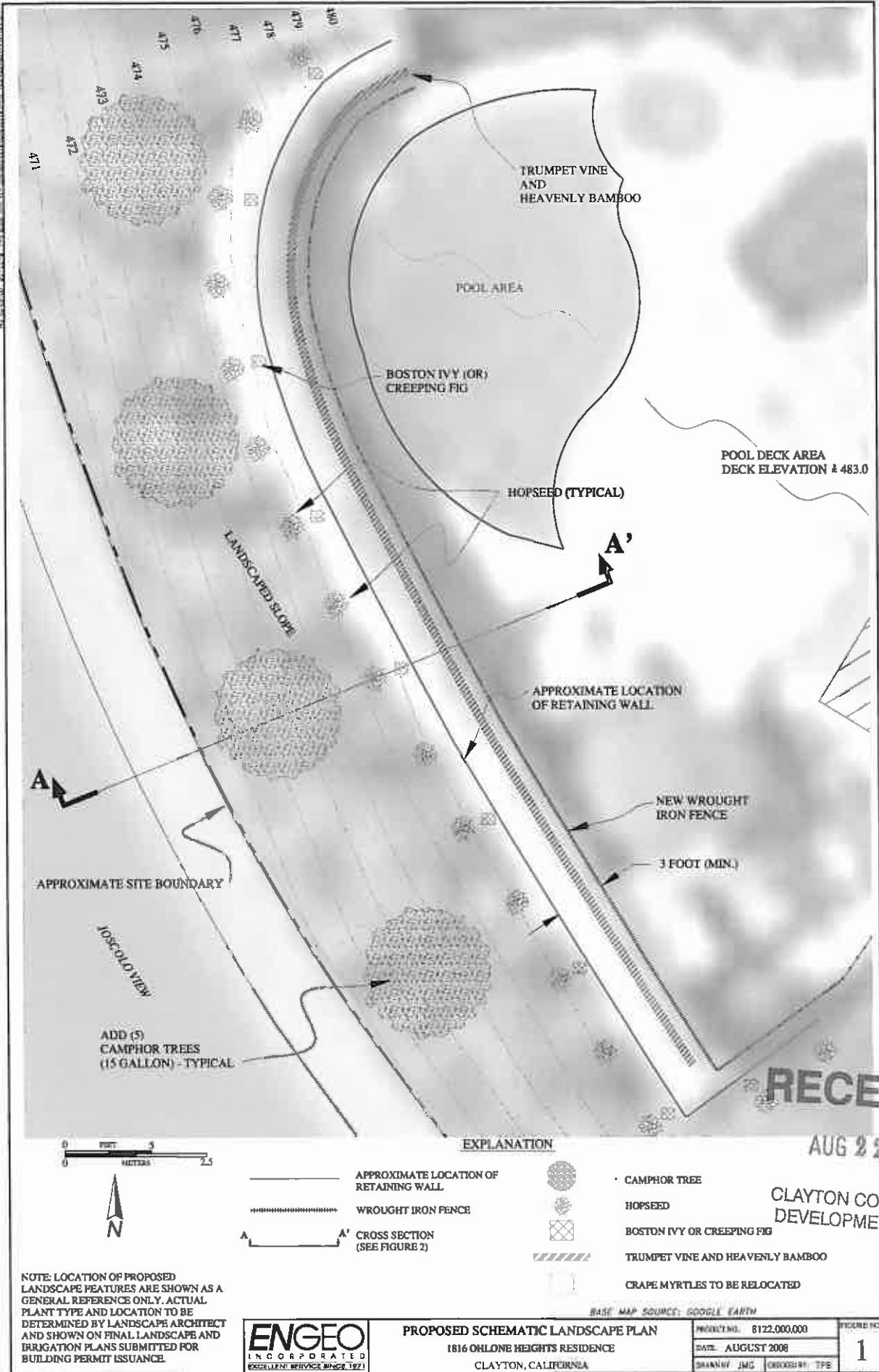
- A Location Map
- B Proposed Schematic Landscape Plan and Proposed Landscape: Cross Section A-A', both submitted by the applicant, date stamped August 22, 2008.
- C April 11, 2008 letter from Peter N. Hellmann

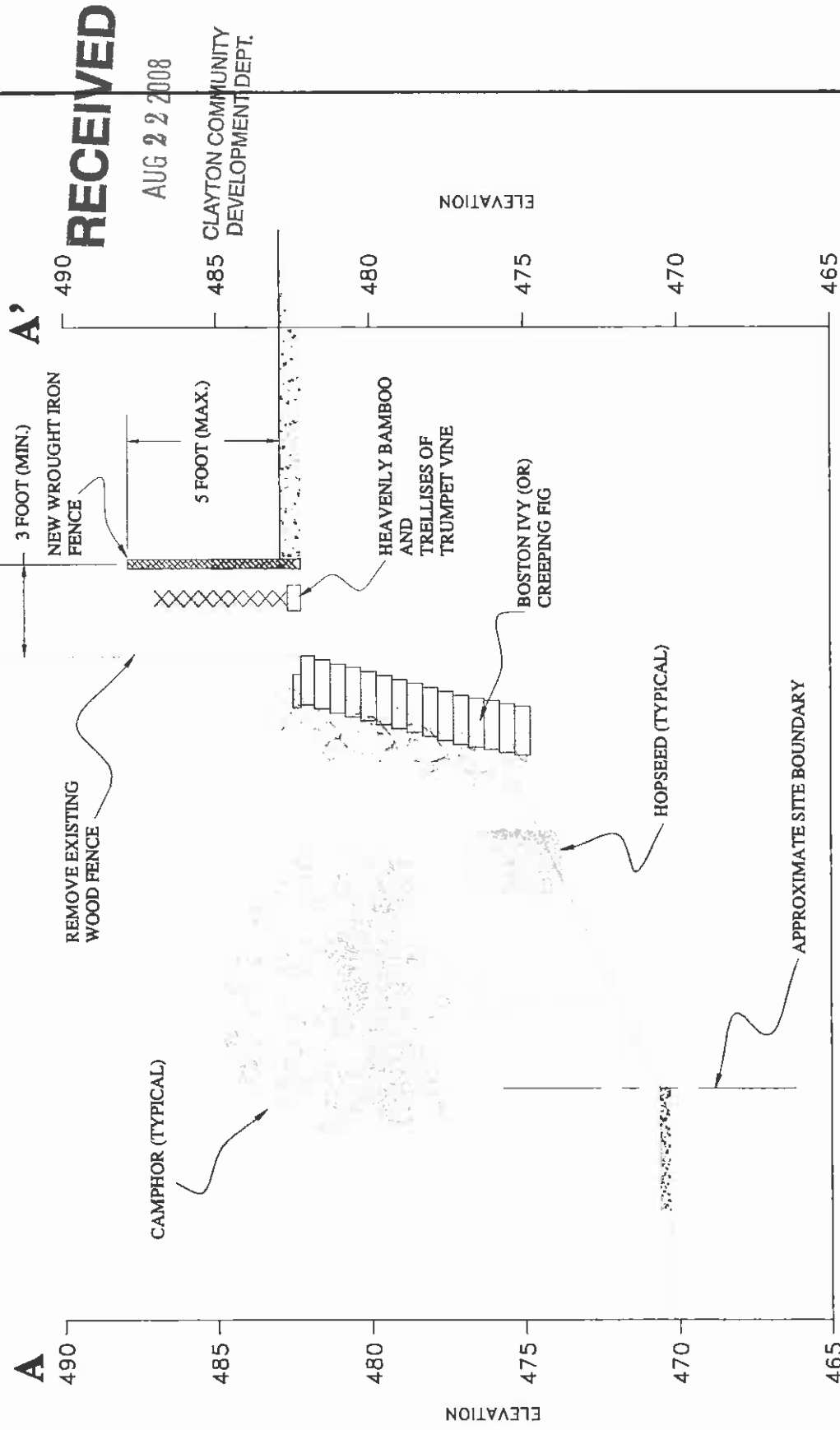
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Location Map
1816 Ohlone Heights
APN 118-392-001

EXHIBIT A





PROPOSED LANDSCAPE: CROSS SECTION A-A'
1816 OHLONE HEIGHTS RESIDENCE
CLAYTON, CALIFORNIA

PROJECT NO.: 8122.000.000
DATE: AUGUST 2008
DRAWN BY: JMG
CHECKED BY: TPB

FIGURE NO.
2

Peter N. Hellmann
156 Joscolo View
Clayton, CA 94517

Telephone:
(925) 672-9371
Facsimile:
(925) 672-4847

April 11, 2008

Mr. David Woltering
City of Clayton
6000 Heritage Trail
Clayton, CA 94517

RECEIVED

APR 11 2008

CLAYTON COMMUNITY
DEVELOPMENT DEPT.

**RE: Ruth Reed's Site Plan Review Permit Application
1816 Ohlone Heights, Clayton (APN: 118-392-001)**

Dear Mr. Woltering:

My wife and I received a copy of a letter dated March 25, 2008, written to you by Charlene Haught Johnson on behalf of her client, Ruth Reed. While we are pleased that Ms. Johnson's letter represents progress in our discussions concerning Ms. Reed's retaining wall and landscaped slope, the two alternatives presented on Pages 2 and 3 of that letter do not accurately represent the specific agreements reached with my wife and me.

The agreements we have made differ from the two alternatives outlined in Ms. Johnson's letter in some important respects, all of which have been previously communicated to Ms. Reed or her representatives. The following items should be expressly incorporated into the project plans and specifications:

Alternative One:

1. The Camphor Trees should be 24" x 24" boxed specimens, not 15 gallons as shown on the Schematic Landscape Plan attached to Ms. Johnson's letter. The larger size was originally proposed in a letter to me from Jeremiah F. Hallisey, Ms. Johnson's partner, dated October 17, 2007.
2. The spacing and sizes of the plantings should be specified. The Boston Ivy or Creeping Fig should be 1 gallon and planted 10" on center. The Hopseed should be 5 gallons and planted 5 feet on center.
3. The existing Crepe Myrtle trees should remain.
4. Andrea Swanson of Thomas Baak and Associates, who is a landscape architect we retained at our expense to assist in our discussions with Ms. Reed, made recommendations concerning trellises and plantings above the retaining wall which should be expressly included in the project specifications, as follows:

"Above the wall between the fence and the top of wall, we recommend substantial wood trellises fastened to the fence with vines at 10' apart with the evergreen vine, *Clytostoma callistegiodes* (trumpet vine) on each trellis. 5 ga. size. Fasten the leaders to the trellis and remove nursery stakes."

5. Andrea Swanson's recommendations concerning irrigation and planting techniques should be expressly included also, as follows:

EXHIBIT C (2 PAGES)

"Irrigation: There appears to be a drip irrigation system in place which can be re-configured to irrigate the new plant materials both at the top and bottom of the wall... The new [Camphor] trees should have a separate valve allocated for them..."

"Planting Technique:

1. For backfill of plant materials, both new and relocated use 1/3 nitrified soil conditioner and 2/3 native topsoil. Add (2) agriform fertilizer tablets (16-16-8) per tree and (1) tablet per shrub.
2. Install plant materials with adequate watering basins especially on the slope planting. These should be 3 times the root ball width and taking into account the slope condition with the grade being flat within the basin.
3. Re-install a bark mulch after planting."

Alternative Two:

1. If the fence is moved back, the face of the fence should be a minimum of 3'-0" from the face of the retaining wall. Ms. Johnson's specification that "[t]he existing wooden fence would be moved about eighteen inches back from its present location" is not adequate.
2. If the fence is moved back, the concrete deck between the face of the wall and the new fence should be removed, and a single row of Nandina domestica (Heavenly Bamboo) should be planted in the space provided (5 gallon size at 3'6" on center). The planter boxes proposed by Ms. Johnson are not acceptable to us.
3. If the fence is moved back, it should be reconstructed with the "Kendall" design used throughout Oakhurst, and should be reduced to 5' in height.

If the foregoing specifications are incorporated into the two alternatives, then my wife and I will support either of them. Of the two, we prefer Alternative One because, in our opinion, the wrought iron fence would do a better job of breaking up the visual mass of the existing 13 foot-tall wall and fence. It should be noted, however, that Alternative One would also require a zoning variance since the combined height of the wall and wrought iron fence would exceed the height allowed by the ordinance (see §17.036.017.B of the Municipal Code). Nonetheless, if Ms. Reed incorporates all of the mitigation measures described above, then we would also support such a zoning variance.

The enclosed photograph, taken earlier today from the centerline of Joscolo View, shows the retaining wall and fence continues to be a significant eyesore in our neighborhood. After more than two years, we look forward to seeing this matter resolved. If you have any questions or need additional information, please call me at my office (925/682-9862).

Sincerely,



Peter Hellmann

cc: Charlene Haught Johnson, Hallisey and Johnson

PLANNING COMMISSION STAFF REPORT

Meeting Date: September 9, 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 effort) 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 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 costly 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. Additionally, staff time and resources expended to bring these matters to the Planning Commission could be re-allocated to other staff responsibilities.

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. By keeping the thresholds at 500 square feet in area and 12 feet in height, 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 16 feet; it should be noted that detached accessory structures are allowed presently to be up to 16 feet in height. The benefit of raising the threshold height would be, as suggested above, decreased cost, time, and resource impacts to the applicant and increased facilitation of project processing by staff. However, the Commission would not be able to review minor additions below the threshold and, therefore, would not directly regulate the smaller developments that occur within the City.

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 presently 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 the City. Naturally, with this option, fewer of the smaller projects would be reviewed by the Planning Commission.

RECOMMENDATION

Staff recommends that the Planning Commission choose Option C and provide direction to staff regarding the amendment of the Municipal Code to raise the thresholds for Planning Commission review of minor single-story additions.

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)