



Agenda
Special Planning Commission Meeting
7:00 P.M. on Wednesday, November 12, 2008
Please Note Changed Meeting Date
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. Chair Catalano to report at the November 18, 2008 City Council meeting.

Public Comment

Approval of Minutes

- 2. Approval of minutes from the meeting of October 28, 2008.

Public Hearings

- 3. None.

Old Business

- 4. None.

New Business

- 5. **ZOA 03-08, City of Clayton.** Study session item regarding possible amendment of the Clayton Municipal Code to allow outside sales in residential districts.
Proposed Action: Provide direction to staff.

Communications

- 6A. Staff
- 6B. Commission

Adjournment

- 7. The next meeting of the Planning Commission is scheduled for **Tuesday, November 25, 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 Meeting
Tuesday, October 28, 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
Assistant Planner Milan Sikela, Jr.

Administrative

1A. Review of agenda items.

1B. Commissioner Johnson to report at the November 4, 2008 City Council meeting.

Public Comment

Approval of Minutes

2. Approval of minutes from the meeting of October 14, 2008.

Commissioner Armstrong moved and Commissioner Haydon seconded a motion to approve the minutes from the meeting of October 14, 2008, as amended. The motion passed 5-0.

Public Hearings

3. **ZOA 02-08, Municipal Code Amendment, City of Clayton.** An amendment of Chapter 17.44 (Site Plan Review) of the Clayton Municipal Code to increase the dimensional thresholds to allow for greater administrative review and approval of minor additions to residences.

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

Commissioner Armstrong asked if the amendment addresses extension of rooflines that are over 16 feet in height. *Director Woltering responded that the amended wording addresses that issue.*

Vice Chair Hartley moved and Chair Haydon seconded a motion to approve Resolution No. 04-08 which recommends City Council approval of an ordinance to amend Section 17.44.020 of the Municipal Code to allow for greater administrative review and approval of minor additions. The motion passed 5-0.

Old Business

4. **Clayton Town Center Retail Study (Final Draft), City of Clayton.** Review of "Clayton Town Center Retail Study" prepared by Jim Harrigan, Managing Principal, Economic Development Systems.

Director Woltering indicated that staff needs Commission comments to pass along to the City Council.

Vice Chair Hartley distributed his prepared written comments (see attached) to the Commission and staff for review and consideration.

Commission comments and questions included:

- We need more certainty about results.
- Restaurant owners outside of the area need to be contacted to see if there is interest in bringing a new establishment into the Town Center.
- Jim Harrigan needs to read and understand the Town Center Specific Plan and to have prospective restaurant owners read the document as well.
- The study should include more data from other cities comparable in size to Clayton.
- How, specifically, is Mr. Harrigan going to market the Town Center?
- Is Mr. Harrigan going to provide direct assistance to existing businesses? *Director Woltering responded that Mr. Harrigan had indicated at the prior Commission meeting that it is not a part of his charge.*
- The retail study seemed to utilize boilerplate material rather than addressing issues that relate specifically to Clayton.
- Do we have any opportunity to expand Mr. Harrigan's role? *Director Woltering indicated that these comments will be passed along to the City Council and they may determine that a modification of Mr. Harrigan's existing scope of work is necessary.*
- The study was too general and did not pertain to Clayton's situation.
- Did not seem that Mr. Harrigan had an incentive to recruit businesses and generate successful applicants. Did not get the sense that adequate research was done.
- We need to see how Mr. Harrigan is marketing Clayton to prospective restauranters.
- Who represented the City at the earlier meetings between the City and Mr. Harrigan? *Director Woltering indicated that two City Councilmembers and the City Manager represented the City.*
- Given the existing restaurants in Clayton, Ed from Mudville Grill expressed concern that the local market would not support additional restaurants.
- Mr. Harrigan should research the amount of money existing businesses in Clayton generate per year.
- The study should be geared to address Clayton's specific challenges.
- We need to look at the Town Center's square-footage potential in terms of how many restaurants we could feasibly support.
- I expected more detail about smaller cities. The cities Mr. Harrigan referred to such as Long Beach and San Jose are big cities.
- Would like to see an action plan that would achieve specific objectives.

Director Woltering summarized the Commission's comments as follows:

- Expansions or adjustments in the scope of Mr. Harrigan's work would be needed to specifically address the comments of the Commission.
- The rationale for the identified marketing opportunities needs to be more clearly explained.
- Incentives should be used to both market and attract new businesses to Clayton's Town Center.

- There needs to be an action plan to guide implementation with performance standards to measure results.
- A member of the Commission should be added to the sub-committee coordinating this study/project.

By consensus, the Commission nominated Chair Catalano and Vice Chair Hartley to work with staff to prepare a comment letter to submit to the City Council that summarizes the Planning Commission's comments about the retail study.

New Business

5. None.

Communications

6A. Staff.

6B. Commission.

Adjournment

7. The meeting was adjourned at 8:11 p.m.

Submitted by
David Woltering, AICP
Community Development Director

Approved by
Tuija Catalano
Chair

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Edward E. Hartley - Comments on City of Clayton Downtown Retail Report

1. At the very least, this plan has a concrete vision that someone is going to try to carry out, rather than having a study and leaving the city council to come up with ideas as to how to accomplish the task;
2. What is the deliverable? There does not appear to be any incentive for EDS to actually bring in a new "destination" retail outlet, but only to try;
3. Although one of the goals is to "find new ways for the locally owned retail businesses to reach new customers" (p. 5) there is no plan to actually do that;
4. Other than the development of city owned property by Uxoma Nwakuche, there does not appear to be any fervent interest by another downtown property owner to seriously explore developing their property;
5. The linchpin of the plan is to attract an entertainment venue for downtown. That will involve someone coming into town and constructing a building. That, in turn, will take either an existing owner to sell, or agree to develop, their building, or purchase the church property and develop that. There is little in the way of specifics as to how that will be done;
6. No discussion of whether our Town Center Specific Plan is compatible with the goals of the Downtown Retail Report;
7. This may be the first time EDS has tried recruiting out of town business for a town as small as Clayton;
8. The initial 3 mile radius is very misleading as to the potential opportunity for attracting consumer dollars to Clayton. There is little development south of town (out Marsh Creek Road), no development south and west (Mt. Diablo), or due east (Kirker Pass Road). Thus the real area of attraction is down Clayton Rd.
9. I would have liked to see some empirical data on the source (by zip code) of business for downtown restaurants based on their credit/debit card receipts.
10. Do we know how much of our own people use our downtown restaurants?
11. Unclear as to what marketing materials, if any, will be developed to actually sell downtown Clayton as a destination?

PLANNING COMMISSION STAFF REPORT

Meeting Date: November 12, 2008

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

Subject: Consideration of Allowing Outside Sales in Residential Neighborhoods (ZOA 02-08)

BACKGROUND

On August 26, 2008, the Planning Commission held a study session to review the matter of outside sales in residential neighborhoods in the City of Clayton (see **Exhibit A** for the August 26, 2008 study session staff report). This issue had come to the Planning Commission primarily because of a circumstance in which home-grown produce was being sold from the front yard of a home here in Clayton. Following review of the situation based on a complaint, it was determined by the staff that the City's current codes does not allow outside sales within residential districts. Staff referred primarily to Chapter 17.71 of the Clayton Municipal Code for this interpretation and position. The already referenced August 26th staff report includes Chapter 17.71 as an attachment and provides additional background and discussion to explain this position in more detail. Based on the public's comments at this meeting, the Planning Commission requested that staff review this matter in more detail. Review of this matter involved researching how other communities are handling outside sales that may commonly occur in residential neighborhoods. Staff was directed to come back with possible amendments to the Clayton Code(s) for consideration that would allow for occasional outside sales in these neighborhoods.

This matter was also considered by the Clayton City Council at its meeting of September 2, 2008. At that meeting, City Attorney Adams presented a memorandum (see **Exhibit B** for Attorney Adam's September 2, 2008 memorandum) to the City Council wherein he affirmed that the City's current codes do not allow for outside sales in residential districts. The City Council acknowledged and supported the City Attorney's position on this matter as well as the Planning Commission's request to consider future possible amendments to the Clayton Code(s) to possibly allow occasional outside sales in residential neighborhoods.

DISCUSSION

Staff contacted various cities throughout Contra Costa County and beyond to research the regulations that these cities have established regarding outside sales in residential districts. Staff considered comments received during the August 26th Planning Commission study session about the Clayton Code not addressing or lacking clarity regarding certain sales that are often associated with residential districts such as garage sales, lemonade stands, and holiday boutiques. Consequently,

staff asked not only about how these communities address outside sales in residential districts in general but, in addition, about how these communities address these more specific types of sales. The following table indicates the regulations these select cities have in the various categories specified.

CITY	REGULATIONS
Concord	<u>Home Occupations (CMC § 122-304)</u> Prohibits exterior indications of home based businesses, including advertising signs or window displays.
	<u>Garage Sales (CMC § 90-104)</u> Allowed in all residential districts three times per any six-month period.
	<u>Holiday Boutiques, Lemonade/Produce Stands</u> The CMC stays silent on these activities.
Lafayette	<u>Home Occupations (LMC § 6-327)</u> Requires that the home occupation “involves no evidence outside the structure or visible from outside the structure that the activity is being conducted on the premises.”
	<u>Residential Business (LMC § 6-347)</u> Indicates that the residential business shall not involve an activity that is incompatible with the surrounding land uses because of “noise, vibration, glare, odor, or appearance...”
	<u>Garage Sales, Holiday Boutiques, Lemonade/Produce Stands</u> The LMC stays silent on these activities.
Martinez	<u>Home Occupations (MMC § 22.040.020)</u> Stipulates that the home occupation shall be conducted “within a dwelling” and that there shall be “no external alteration of the dwelling” as a result of the home occupation.
	<u>Garage Sales, Holiday Boutiques, Lemonade/Produce Stands</u> The MMC stays silent on these activities.
Moraga	<u>Home Occupations (CMC § 122-304)</u> Prohibits the home occupation being visible from off-site and prohibits any exterior evidence of the home occupation.
	<u>Garage Sales, Holiday Boutiques, Lemonade/Produce Stands</u> The MMC stays silent on these activities.

CITY	REGULATIONS
Orinda	<u>Home Occupation (OMC § 17.3.7)</u> Requires that there shall be “no outside display, advertising sign, window display, or storage of goods or materials that could be used to identify the business.”
	<u>Garage Sales (OMC § 17.3.3)</u> Allowed in all residential districts twice per calendar year.
	<u>Holiday Boutiques, Lemonade/Produce Stands</u> The OMC stays silent on these activities.
Palo Alto	<u>Home Occupation (PAMC § 18.42.060)</u> Outdoor storage of any material, equipment, or goods is prohibited “in connected with the home occupation.”
	<u>Garage Sales, Holiday Boutiques, Lemonade/Produce Stands</u> The PAMC stays silent on these activities.
Pleasant Hill	<u>Home Occupations (PHMC § 18.20.070)</u> Allows outside sales if “the zoning administrator makes a written finding that the home occupation will not have an adverse affect on the neighborhood. In doing so the zoning administrator may impose reasonable conditions necessary to ensure that the home occupation will comply with the provisions of this section.”
	<u>Garage Sales (OMC § 17.3.3)</u> Classified as “Personal Property Sales” in the PHMC. Two “sales of personal property” are allowed per year.
	<u>Holiday Boutiques, Lemonade/Produce Stands</u> The PHMC stays silent on these activities.

Like the City of Clayton, these other communities have home occupation regulations to protect and maintain the character of their residential neighborhoods. Typical standards require that the home occupation be conducted within the home and that there is no external evidence of the business activity (e.g., signage, exterior storage of goods and materials, etc.). However, as with Clayton, the home occupation regulations in certain cases allow client visits to occur within the residence, thereby not impacting the residential character of the neighborhood. The City of Pleasant Hill does allow outside sales in association with a home occupation in residential districts, subject to the Zoning Administrator making a written finding that the activity will not have an adverse effect on the neighborhood; the Zoning Administrator may attach conditions to his/her finding and action.

Other than garage sales (which are allowed from two to six times per year without a permit, depending on the city), the regulations in the other cities were silent on (i.e., did not address) such activities as lemonade stands, produce stands, and holiday boutiques.

Based on the research conducted by staff, Clayton's Home Occupation Permit provisions in Municipal Code Chapter 17.71 appear very consistent with how other communities are addressing commercial activities in residential districts. Generally, the objective is to assure that the activities that do occur within these residential districts are consistent with the expectations of the community members living in those districts as to the specific types activities and potential impacts caused by those activities (e.g., noise, traffic, odors, aesthetics, etc.).

At the August 26, 2008 meeting, the Planning Commission did request follow-up on possible code amendments to consider occasional outside sales in residential districts. We were informed by the City Attorney (see **Exhibits A and B**) that equal protection provisions of the law make it difficult to restrict the types of products being sold and by whom. There appears to be a desire to consider allowing occasional or limited outside sales in residential districts, while maintaining and protecting the residential character of the districts. Additionally, there appears to be the desire to provide some clarity in the Clayton Code for certain sales activities that may occur in these districts: garage sales, lemonade stands, holiday boutiques, and home-grown produce sales. Staff offers for consideration and discussion the following option for allowing occasional outside sales in residential districts:

1. List typical activities (**Examples Listed Below**) that are to be allowed such as the following:
 - Garage/Yard Sales;
 - Holiday Boutiques;
 - Lemonade Sales; and,
 - Home-grown Produce Sales.
2. Limit the frequency (**Example Listed Below**) of the activity to:
 - Not more than three weekends a calendar year.
3. Limit the hours of operation (**Example Listed Below**) of the activity to:
 - Dawn to Dusk
4. Other (For Discussion)

If the limited outside sales activity would be conducted within the established parameters, there would be no permit or fee required by the City. If the activity would be conducted outside of the adopted parameters and other provisions of the Clayton Municipal Code, the matter would be subject to a code enforcement action. Staff suggests that, by limiting the frequency and establishing other appropriate parameters for the outside sales activity, there may be an opportunity to provide flexibility without the need for extra permitting, yet maintain and protect the character of the residential districts.

RECOMMENDATION

Staff recommends that the Commission provide staff with direction and continue the study session, as necessary, to the meeting of November 25, 2008.

EXHIBITS

- A August 26, 2008 Study Session Staff Report
- B Attorney Adam's September 2, 2008 Memorandum to the City Council

ZOA\2008\03-08.sr1

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).

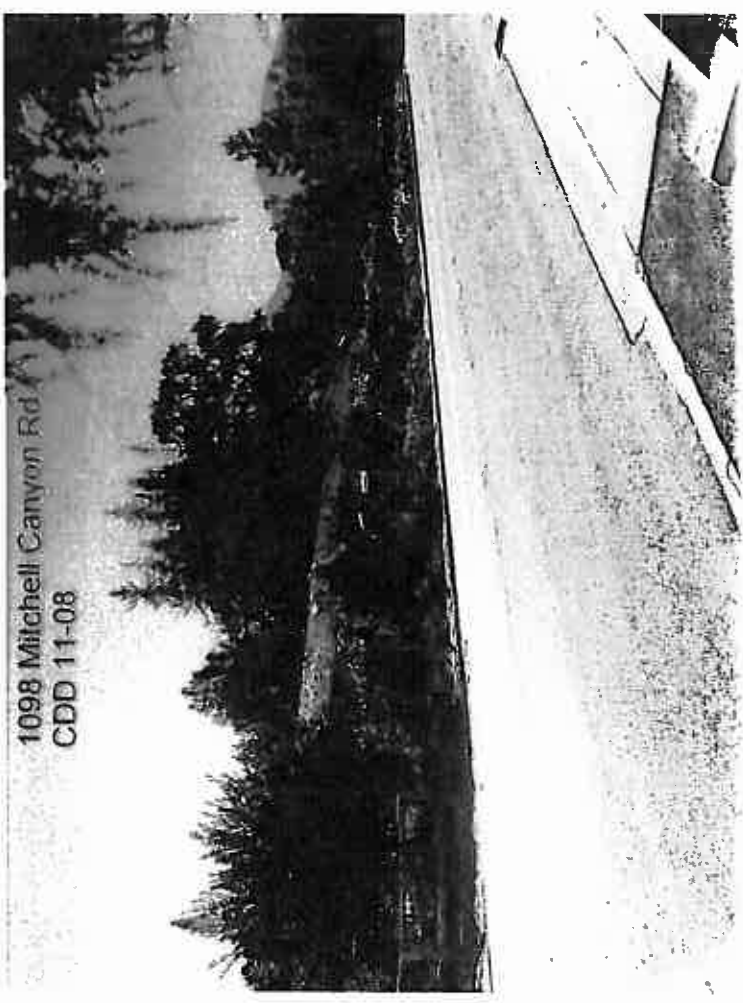
With respect to the property at 1098 Mitchell Canyon Road, staff suggests that the location and characteristics of the land are not suitable for outside sales of produce, given the need to address important governmental interests related to assuring adequate parking, access, and the public

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.

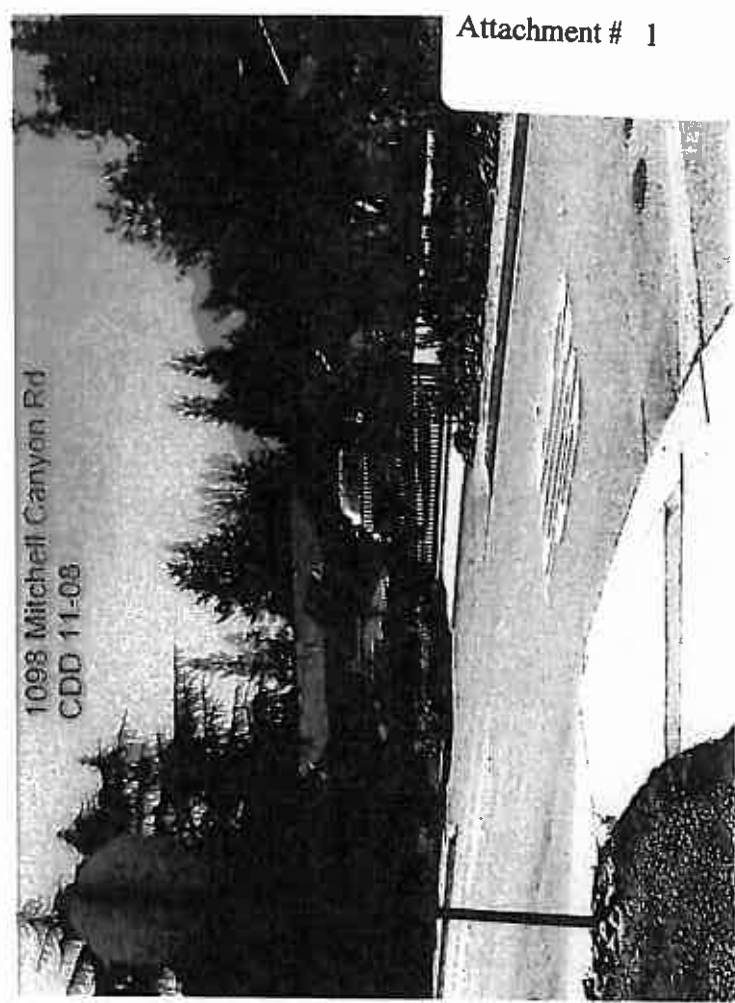
Attachments:

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

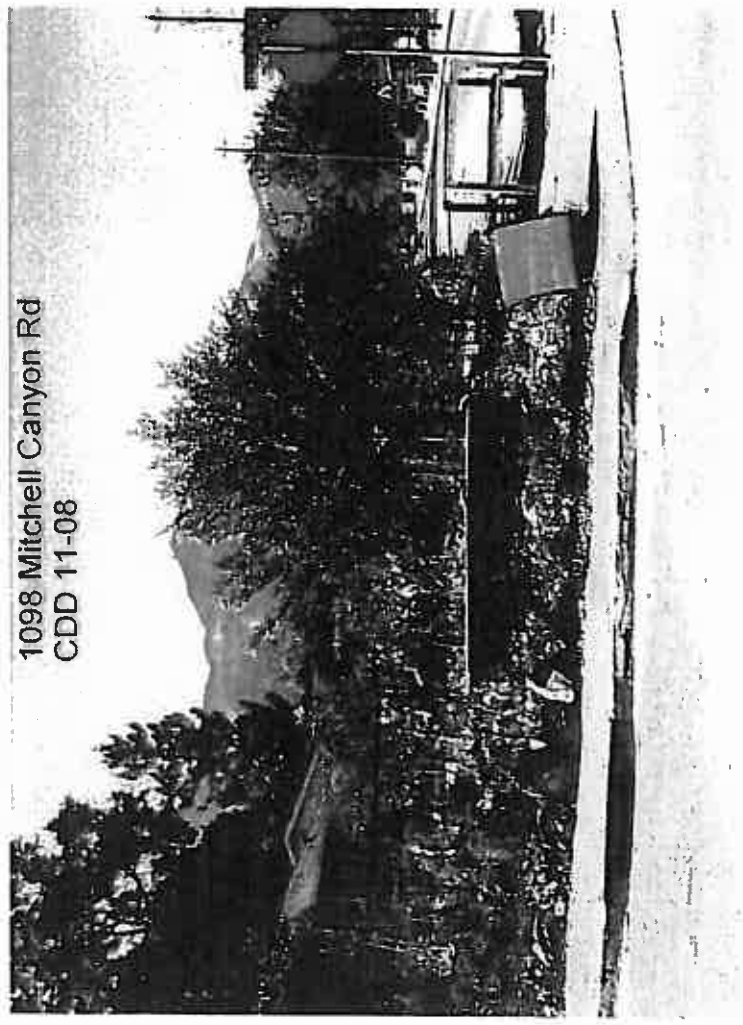
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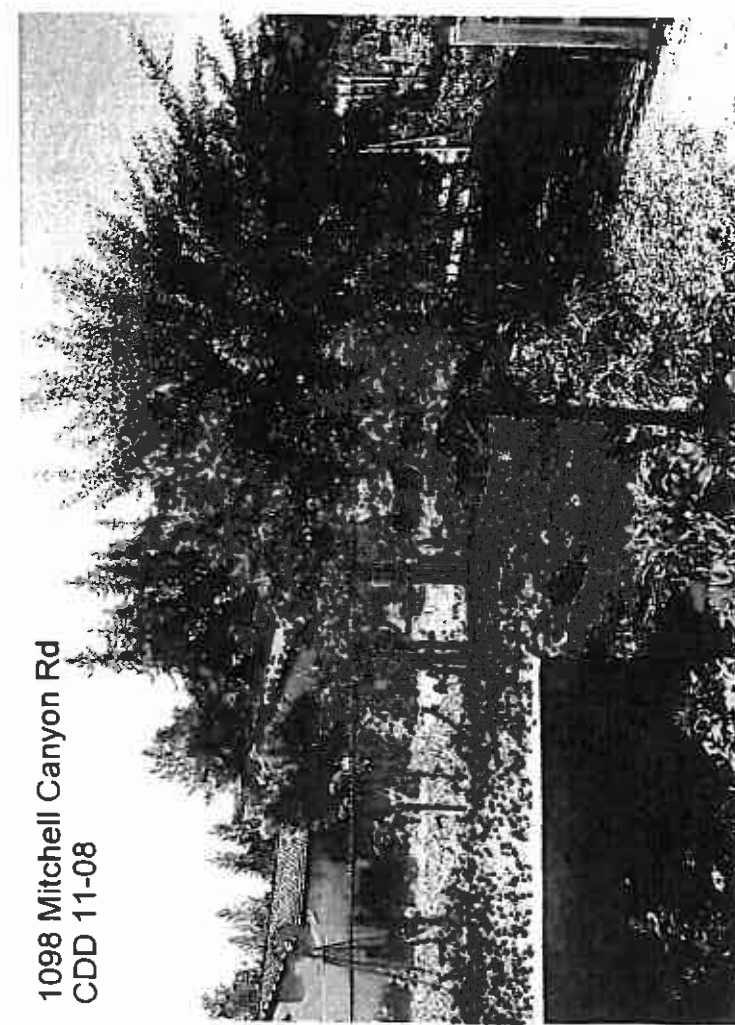
1098 Mitchell Canyon Rd.
CDD 11-08



1098 Mitchell Canyon Rd
CDD 11-08



1098 Mitchell Canyon Rd
CDD 11-08



1098 Mitchell Canyon Rd
CDD 11-08

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.

Extension

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 may 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

Phone: 608-269-8722 / 608-372-8722

TDD: 800-947-3529

Email: amy.schanhofer@ccs.uwex.edu

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.

An EEO/AA employer, University of Wisconsin Extension provides equal opportunities in employment and programming, including Title IX and American with Disabilities (ADA) requirements.

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.

MEMORANDUM

Received

SEP 02 2008

City of Clayton

To: Clayton City Council

From: J. Daniel Adams, City Attorney

Date: September 2, 2008

Subject: Possible Amendment of the Clayton Municipal Code
To Allow Outside Sales in Residential Areas

The above referenced matter was the subject matter of a Study Session of the City of Clayton Planning Commission on Tuesday, August 26, 2008. Because of misunderstandings arising from the Study Session and statements made by or attributed to the Commission, I have been asked to address this subject.

After Community Development Director, David Woltering, presented his Staff Report, the Commission discussed the matter and received public testimony. Following public testimony, it provided guidance to staff. Although there was understandable confusion as to the Commission's guidance to staff, neither the scope of the Agenda Item, nor the authority of the Planning Commission support any action other than guidance or general direction and a careful review of the proceedings reveals that the Commission's ultimate guidance was in accordance with these established parameters. The Commission's guidance was three-fold. First it requested staff to prepare a draft Ordinance for future consideration which would consider allowing occasional outside sales in residential neighborhoods; second it requested staff to explore whether there was a process to allow such sales on an interim basis pending any amendment of the Ordinance; and third, it suggested that staff explore the withdrawal of the Notice of Violation.

Pursuant to the Commission's guidance, staff is undertaking the process of preparing possible Amendments to the Municipal Code which we anticipate will be presented at the Commission within the next 30 to 60 days. With regard to the Commission's concern as to the intervening period before any action is taken on possible Amendments, following careful review, staff does not find legal means upon which to allow occasional uses such as the vegetable stand, under the current provisions of the Clayton Municipal Code. Clayton follows the well established legal principal in zoning law that any non-enumerated use is presumptively prohibited. Accordingly, unless a use is expressly permitted within a particular zone, it is prohibited. The recent case of *City of Corona v. Naulls* (2008) 08 Cal. Daily Op. Serv. 11,542 confirms this principle. In *Naulls*, the City of Corona's Municipal Code was examined and found to be drafted in a permissive fashion, i.e., any use not enumerated in the code is presumptively prohibited.

The City of Corona Code provisions are similar to the City of Clayton's. Specifically our Code provides in Chapter 17.16 entitled Single Family Residential that "all land within any of the single family residential districts . . . *may* be used for any of the uses described in, and under the regulations of, this Chapter". Thus, by its express language and subject to the more specific home occupation permit provisions (Chapter 17.71), only uses described in Chapter 17.16 are permitted.

Although the Planning Commission Meeting Agenda addressed the more general topic of possible amendment of the Municipal Code to allow outside sales in residential areas, much of the public's testimony was focused on one particular residential location and the activity of sales by minors at a vegetable stand for which the City had received a complaint. As discussed above, the direction/guidance of the Commission to staff was limited to working on a proposed Amendment(s) of the Code and exploring whether some form of interim relief could be available to allow uses such as those occurring at 1098 Mitchell Canyon Road. Because our Code is drafted in permissive fashion, this activity is prohibited unless expressly allowed under the City's provisions for the residential district. A careful reading of our Code reveals there is an absence of legal authority for the City allowing such a use absent its amendment.

Staff has now conducted a review of the Code and does not find any legitimate basis for allowing interim activities. As the City's legislative body, the City Council is empowered to enact and implement various Codes including the Zoning Code. While it may delegate certain powers to staff or other bodies, it has not chosen to do so in the instant matter. Accordingly, there is no legitimate basis for the Community Development Director or the Planning Commission to withdraw the Notice of Violation or otherwise waive the enforcement of Code provisions.

In summary, there is not a basis in the current City of Clayton Code to allow outside sales activities in the City's residential areas. The City may, through its Code amendment process, consider and perhaps adopt an amendment(s) to allow such activities in the future. In the meantime, as mentioned in the staff report and by comments of staff presented at the August 26, 2008 Planning Commission meeting, in the circumstance of the property owner at 1098 Mitchell Canyon Road, other means to sell and distribute excess produce grown at that property could be pursued that could comply with the current Code. These options include the following: sale of produce at the local Farmer's Market; Subscription Framing; and/or requesting Planning Commission approval through Chapter 17.71 of the City of Clayton Code to be allowed up to six customers to come to the residence per day to pick up excess process, while not having external evidence of business activity such as exterior signage or display.

JDA:lac

Clayton Muni Code: Possible Amendment
Sale in Residential 080828