



Agenda
Planning Commission Meeting
7:00 P.M. on Tuesday, October 26, 2010
Hoyer Hall, Clayton Community Library, 6125 Clayton Road, Clayton

CALL TO ORDER, ROLL CALL, PLEDGE TO THE FLAG

Administrative

- 1A. Review of agenda items.
- 1B. Commissioner Meriam to report at the City Council meeting on November 2, 2010.

Public Comment

Approval of Minutes

- 2. Approval of minutes from the meeting of September 28, 2010.

Public Hearings

- 3A. **UP 03-10, Use Permit, Longevity Fitness Studio**, 1026 Oak Street, Suite 102, APN 119-013-009. A request for a Use Permit to allow the operation of a fitness center in a ground-floor retail tenant space within the Town Center.
Proposed Action: (This item will not be considered at this meeting as authorization for consideration of a non-retail commercial use on the ground floor within the Flora Square project must be first authorized by an affirmative vote of the City Council.)
- 3B. **VAR 01-10, Variance, Dana and Kathy Seemen**, 9001 Elk Drive, APN 118-650-002. A request for a Variance to allow an attached shade arbor to encroach 12 feet into the required 15-foot rear setback.
Proposed Action: Approval, with conditions.

Old Business

- 4. None.

New Business

- 5. None.

Communications

- 6A. Staff.
- 6B. Commission.

Adjournment

- 7. The next meeting of the Planning Commission is scheduled for **Tuesday, November 9, 2010**.

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
Clayton Planning Commission Meeting
Tuesday, September 28, 2010

Call to Order

Chair Sandra Johnson called the meeting to order at 7:00 p.m. at Hoyer Hall, 6125 Clayton Road, Clayton.

Present: Chair Sandra Johnson, Vice Chair Dan Richardson, Commissioner Bob Armstrong, Commissioner Tuija Catalano, Commissioner Ted Meriam

Absent: None

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

Administrative

1A. Review of agenda items.

1B. Commissioner Catalano to report at the City Council meeting on October 5, 2010.

Public Comment

None.

Approval of Minutes

2. Approval of minutes from the meeting of August 24, 2010.

Commissioner Catalano moved and Commissioner Armstrong seconded the motion to approve the minutes from the meeting of August 24, 2010, as amended. The motion passed 4-1 (Abstain – Vice Chair Richardson abstained as he did not attend the August 24, 2010 Planning Commission meeting).

Public Hearings

3. None.

Old Business

4. None.

New Business

5. **GPA 02-10, General Plan Amendment, City of Clayton.** A study session to review the need and approach for updating the City's General Plan Growth Management Element. The City's Growth Management Element has been in effect since January 2, 1992 and was updated previously in February 1995.

Director Woltering presented the staff report and indicated that updating the City's Growth Management Element (GME) is a necessary part of completing the biennial checklist requirement to receive transportation funds from the Contra Costa Transportation Authority (CCTA).

Commission comments and questions included:

- Is the City Manager supportive of the moving the checklist forward to the CCTA with a draft GME as suggested by CCTA Deputy Director Martin Engelmann? Director Woltering indicated that the City Manager was supportive to expedite the process.

- It would be good to expedite the process to get Measure C and Measure J funds. Completion and approval of the checklist would allow release of funds to the City.
- What are the Measure J monies used for? Director Woltering indicated that the monies are used for transportation improvements such as the re-paving of roads.
- Measure J seems less onerous than Measure C.
- Although the San Ramon GME update is a good model to use model checklist is a good example to use, Clayton's GME would presumably be less extensive since we are a smaller city.
- When is the deadline? Director Woltering indicated the deadline is July 2011.
- What is a brownfield? Does Clayton have a brownfield? Director Woltering indicated that a brownfield is an area that was previously developed with heavy industry and may be contaminated with toxic substances. Such environmental concerns make residential developers choose greenfields (i.e., open space areas and agricultural lands) to develop on rather than brownfields. As a result, cities with brownfield areas seek to detoxify brownfields in order to make them developable to avoid the unnecessary urbanization of greenfields. Clayton does not have any brownfields.
- Does Clayton have a five-year Capital Improvement Program? Director Woltering indicated "yes".
- It would good to use 2010 census data rather than 2000 census data.
- Although Measure J does not require the use of level of service standards for local street intersections or performance standards for public services and facilities as did Measure C, Commissioners agreed with staff that such measures should be retained in the updated City of Clayton GME. It was noted that San Ramon maintained the use of these measures.
- Do we have any idea how many homes are not on sewer or use wells? Director Woltering indicated that the City Engineer has this information.
- The focus should be on getting the completed and approved checklist to the Contra Costa Transportation Authority so that the City can obtain the Measure C and Measure J monies.
- Do we have recent traffic information to use for the checklist and the GME update? Director Woltering indicated that the City has recent traffic information from projects that have or will be considered by the City. Director Woltering stated that it is the intent to use existing data and information for completing the checklist and GME update.

Director Woltering added that the Measure C and Measure J monies are intended to fund "hard" improvements related to infrastructure and transportation. A draft GME will be brought back before the Planning Commission in approximately sixty days.

Communications

6A. Staff.

Director Woltering indicated the following:

- The retaining wall at 1816 Ohlone Heights is complete and the landscape and maintenance agreement will be recorded against the property.
- A public review draft of the Clayton Community Church Environmental Impact Report may be available in early December 2010.

6B. Commission.

Commissioner Meriam indicated that Tamara Steiner from the Clayton Pioneer is holding a question and answer session for a candidate's forum at Hoyer Hall.

Adjournment

7. The meeting was adjourned at 8:08 p.m. The next regular meeting of the Planning Commission is scheduled on **Tuesday, October 12, 2010.**

Submitted by
David Woltering, AICP
Community Development Director

Approved by
Sandra Johnson
Chair

Plng Comm\Minutes\2010\0928

MEMORANDUM

DATE: October 26, 2010

TO: Planning Commission

FROM: Milan J. Sikela, Jr. 
Assistant Planner

SUBJECT: Item 3A on the October 26, 2010 Planning Commission Agenda

The Use Permit (UP 03-10) request by Longevity Fitness Studio to operate a fitness center in a ground-floor retail tenant space within the Flora Square building at 1026 Oak Street has been pulled from the October 26, 2010 Planning Commission Agenda. Because of a requirement in the Flora Square Disposition and Development Agreement that a proposal for a ground-floor non-retail commercial use in the Flora Square building must be initially reviewed by the Clayton City Council. As a result, the item cannot be reviewed by the Planning Commission at this time.

UP\2010\03-10.memorandum.to.pc

PLANNING COMMISSION STAFF REPORT

Meeting Date: October 26, 2010

From: Milan J. Sikela, Jr. 
Assistant Planner

Subject: Dana and Kathy Seeman
Variance (VAR 01-10)

REQUEST

Approval of a variance to allow a proposed attached shade arbor to encroach 12 feet into the required 15-foot rear setback.

PROJECT INFORMATION

Applicant(s) / Location: Dana and Kathy Seeman
9001 Elk Drive
APN 118-650-002

General Plan Designation: Medium Density - Single Family Residential (3.1 to 5.0 units per acre). This proposal is allowable within the General Plan designation.

Zoning: Planned Development (PD).

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

Public Notice: On October 15, 2010, a public hearing notice was posted at the notice boards, mailed to property owners within 300 feet of the site, and faxed to the newspapers. Comments received have been incorporated in the text of the staff report.

Agency Referrals: Not required.

Authority: Section 17.52.030 of the Municipal Code authorizes the Planning Commission to approve a variance.

DISCUSSION

The applicant has applied for a variance to allow a proposed attached shade arbor to encroach 12 feet into the required 15-foot rear setback. The subject shade arbor is proposed along the rear of the existing residence. The site plan and arbor detail are provided as **Attachment 1**. A letter in support of the project has been received and is provided as **Attachment 2**. The variance standards of review specified in Section 17.52.030 of the Municipal Code require certain findings to be made. The findings are listed below in **bold** and staff comments are shown in standard typeface. The property owner has submitted responses to the variance findings (please see **Attachment 3**).

The Planning Commission “shall find the following before approval of any application is given. Failure . . . to find the following [findings] requires that the application shall be denied. Circumstances to be found prior to the approval of an application are:

[Finding] A. That any variance authorized shall not constitute a grant of special privilege inconsistent with the limitations on other properties in the vicinity and the same respective land use district in which the subject property is located;”

The subject property’s rear yard being is located at the top of a slope within the Falcon Ridge subdivision and receives extreme sun exposure. Prior to this proposal, the property owner attempted to use an umbrella for shade purposes, but consistent strong winds prevented use of an umbrella. Due to these conditions, the property owner wishes to construct a permanent shade arbor to allow for enjoyment of the rear yard area of the subject property. However, because of topographic and siting constraints on the subject property (see staff comments under Finding B below), application of the 15-foot rear setback for the Falcon Ridge Planned Development would prevent the property owner from constructing a shade arbor. As a result, authorization of a variance would allow an attached shade arbor as other property owners in the vicinity are able to enjoy and would not constitute a grant of special privilege inconsistent with what other property owners located in the Falcon Ridge Planned Development are able to enjoy.

“[Finding] B. That because of special circumstances applicable to the subject property because of its size, shape, topography, location or surroundings, the strict application of the respective zoning regulations is found to deprive the subject property of rights enjoyed by other properties in the vicinity and within the identical land use district;”

The subject property is located on a corner lot. The buildable, level portion of the lot is restricted by a steep slope rising from the west (exterior) side property line and the south (front) property line. This topography has created a unique circumstance where the residence is located further back toward the rear property line of the property, restricting the rear yard area. The orientation of the rear plane of the residence to the rear property line has fostered a tapered effect from east to west, narrowing the rear yard area from a depth of approximately 22 feet to 15 feet (please see **Attachment 4** for site photographs). Also, the subject lot is not as deep as other properties within the vicinity (please see **Attachment 5** for Lot Depth Comparison Analysis). The subject lot is 110 feet in depth compared to the lot behind it, which is 213 feet in depth, the lots directly east of the subject lot which are 120 feet in depth, and the lots across the street which are 140 feet, 115 feet, and 137 feet in depth, respectively. Furthermore, the residences on the other lots are sited closer to their respective front property lines than the subject residence. When combined with the longer lot depths, this siting of nearby residences allows for much deeper rear yard depths on neighboring properties than the subject property. This, in turn, allows neighboring property owners to enjoy such rights as construction of attached shade arbors within their rear yards. Because of the shallow rear yard depth of the subject lot, the required 15-foot rear setback for the Falcon Ridge Planned Development precludes construction of a shade arbor that neighboring property owners could construct and, hence, deprives the subject property of rights enjoyed by other properties in the vicinity.

“[Finding] C. That any variance authorized shall substantially meet the intent and purpose of the respective land use district in which the subject property is located.”

The intent and purpose of the setbacks in the Falcon Ridge Planned Development are to maintain open space between the residence and the property line, but also to allow construction of ancillary structures such as attached shade arbors. Overall, the subject property contains ample (albeit unbuildable) open space in the sloped exterior side yard and front yard areas—areas that are highly visible from the street. Construction of an attached shade arbor in the rear yard would not impact this visible open space area (thereby maintaining the intent and purpose of the Falcon Ridge Planned Development setbacks) yet would allow a use (i.e., an attached shade arbor) that meets the intent and purpose of the Falcon Ridge Planned Development.

RECOMMENDATION

Staff recommends that the Planning Commission approve Variance VAR 01-10 to allow a proposed attached shade arbor to encroach 12 feet into the required 15-foot rear setback.

Proposed Findings of Approval

Based upon the evidence set forth in the staff report, 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 Variance:

1. Because of topographic and siting constraints on the subject property, strict application of the 15-foot rear setback for the Falcon Ridge Planned Development would prevent the subject property owner from constructing a shade arbor. Authorization of a variance to allow the construction of an attached shade arbor to encroach 12 feet into the required 15-foot rear setback, given the subject property circumstances, would allow this property owner to enjoy the use of the property more consistent with how other property owners in the vicinity are able to use their properties and would not constitute a grant of special privilege inconsistent with limitations on other properties located in the Falcon Ridge Planned Development.
2. The buildable, level portion of the lot is restricted by a steep slope rising from the west (exterior) side property line and the south (front) property line; the residence is located further back toward the rear property line, narrowing the rear yard area from a depth of 22 to 15 feet; the subject lot is 110 feet in depth which is less than other properties in the vicinity which range from 115 feet to 213 feet in depth; and, the residences on the nearby lots are sited closer to their respective front property lines than the subject residence, resulting in these nearby lots to have more rear yard depth and, in turn, enabling these nearby property owners to construct an attached shade arbor. Accordingly, the strict application of the 15-foot rear setback would deprive the subject property owner of rights enjoyed by other property owners in the Falcon Ridge Planned Development.
3. Authorizing the attached shade arbor to encroach 12 feet into the required 15-foot rear setback would substantially meet the intent and purpose of the Falcon Ridge Planned Development because of the following:
 - a. Attached shade arbors that are located in rear yards is an allowed use within the Falcon Ridge Planned Development; and
 - b. Even with the shade arbor, there will still be a substantial amount of open space area on the subject property which is an objective of the setback requirement..

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

Proposed Condition of Approval

This condition of approval applies to the Proposed Site Plan and Arbor Detail, prepared by Greg Wrenn, Past the Gate, date stamped October 21, 2010.

1. 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, but not limited to, attorney's fees, costs, 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 any environmental review conducted under the California Environmental Quality Act for this entitlement and related actions.

Advisory Notes

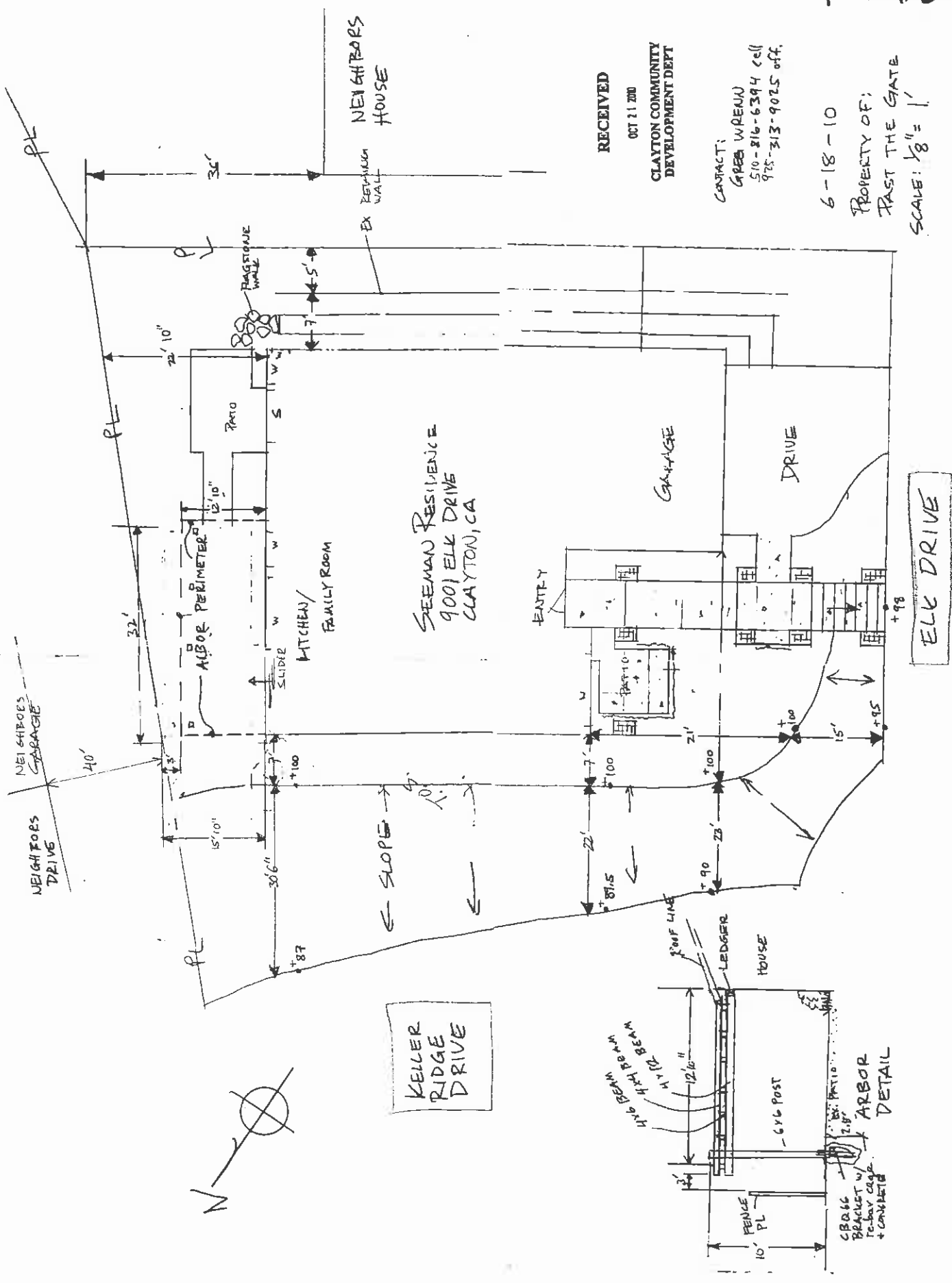
Advisory notes are provided to inform the applicant of: (a) Clayton Municipal Code requirements; or (b) requirements imposed by other agencies. The advisory notes are not part of the conditions of approval.

1. The applicant shall comply with all applicable state, county, and city codes, regulations and adopted standards.
2. The applicant shall obtain the necessary building permits from the Contra Costa County Building Inspection Department.
3. 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.

ATTACHMENTS

- 1 Proposed Site Plan and Arbor Detail, prepared by Greg Wrenn, Past the Gate, date stamped October 21, 2010
- 2 Letter from Cliff and Laura Seaholm, date stamped October 22, 2010
- 3 Written supplement justifying need for variance, submitted by the applicant, date stamped October 8, 2010
- 4 Site Photographs, submitted by the applicant, date stamped October 21, 2010
- 5 Lot Depth Comparison Analysis, prepared by staff October 22, 2010

VAR\2010\01-10.staff.report



RECEIVED

OCT 22 2010

**CLAYTON COMMUNITY
DEVELOPMENT DEPT**

October 20, 2010

City of Clayton
Community Development Department
6000 Heritage Trail
Clayton, CA 94517

Re: Variance for rear-yard arbor at 9001 Elk Drive (APN 118-650-002)

To Whom it May Concern:

We reside at 5192 Keller Ridge Drive in Clayton. The front of our house faces the side of 9001 Elk Drive, and therefore one side of the Seeman's rear-yard. We have no objections to the Seeman's plans to attach a rear-yard arbor. They have already done a great deal to improve their property, and we are confident that their plans for an arbor will be a further improvement to their house and to our neighborhood.

We support their request for a variance.

Cliff & Laura Seaholm

Cliff and Laura Seaholm
5192 Keller Ridge Drive
Clayton, CA 94517
(925) 524-1919

October 6, 2010

Planning Commission
City of Clayton
5375 Clayton Road
Clayton, California 94521

Parcel # 118650-002
Zone : PD

Dear Planning Commission:

We are applying for a variance to the rear property line setback requirement in order to accommodate an arbor for shade over our existing patio. Currently, the back of our home is 15 feet-10 inches from the rear property line at its nearest point. The existing patio comes within one foot of the property line, therefore, the arbor post will sit 18 inches from the property line, with a one-foot cantilever of the arbor cover, bringing the structure to 6 inches from the property line at its nearest point at our rear property line. The arbor will be attached to the house, so we are asking for a variance of the 15 foot setback requirement.

Reasons for variance:

Approval of the variance will not allow us any special privilege over our neighbors. We have the smallest backyard in the neighborhood by 60%. This is a corner lot with a large slope from the side street to the top flat part of the lot, as well as a slope from the front west street to the flat part of the lot. The home has been pushed back from both the North and West sides resulting in tapering narrow back and side yards. As noted on the plan, the rear of our home to property line at its widest point is 22 feet-10 inches and at the narrowest point is 15 feet-10 inches. The narrowest distance for our neighbors is 36 feet. The topography of this lot, along with the current zoning restrictions deprives us from having an arbor above our patio for shade.

At our home location, the consistent strong winds do not allow for practical use of an umbrella. Therefore, we need an arbor that can provide shade and not be affected by the wind. The neighbor most affected by this variance is behind our home. Their home is located at the bottom of a large slope, 40 feet from our rear property line; and it is the garage side of their home. We believe we are not afforded the same use of our garden and patio since our home is located so close to the rear property line due to the large front and side slopes.

The proposed arbor is well within the scale, scope and design amenities others enjoy in their gardens, which under current restrictions, we are denied.

Thank you for your consideration of our request. If you need additional information or wish to visit the site please contact us.


Dana & Kathy Seeman
9001 Elk Drive
Clayton, CA. 94517
524-0780

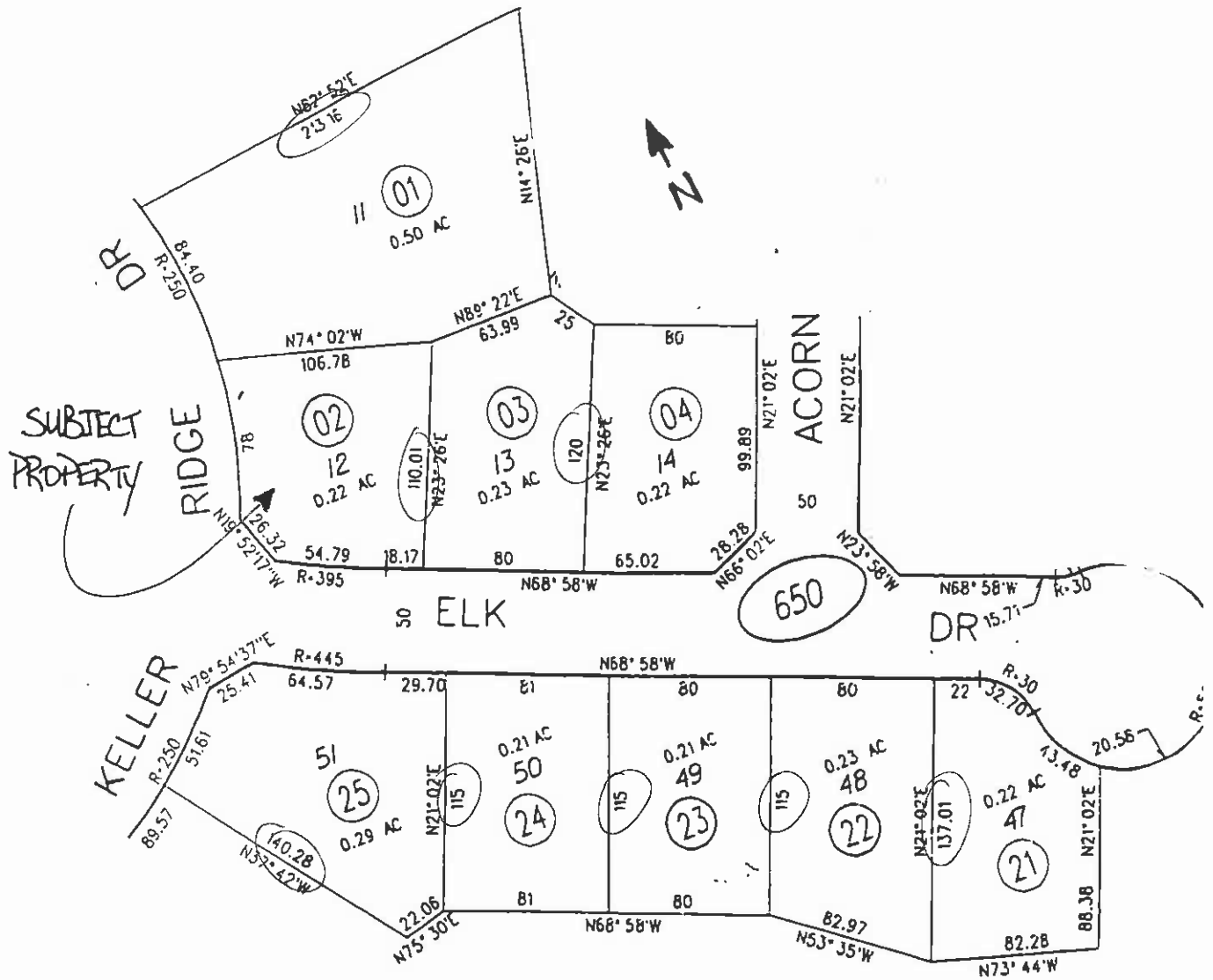
RECEIVED

OCT - 8 2010

**CLAYTON COMMUNITY
DEVELOPMENT DEPT**







* PLEASE NOTE: LOT DEPTHS ARE CIRCLED FOR REFERENCE PURPOSES.

LOT DEPTH COMPARISON ANALYSIS (PROVIDED BY STAFF)