

Minutes
Clayton Planning Commission Meeting
Tuesday, September 13, 2011

Call to Order

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

Present: Chair Dan Richardson, Vice Chair Keith Haydon, Commissioner Bob Armstrong, Commissioner Sandra Johnson, and Commissioner Gregg Manning

Absent: None

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

Administrative

1A. Review of agenda items.

1B. Chair Richardson to report at the City Council meeting on September 20, 2011.

Public Comment

None.

Approval of Minutes

2A. Approval of minutes from the meeting of July 12, 2011.

Commissioner Armstrong moved and Vice Chair Haydon seconded a motion to approve the minutes, as amended. The motion passed 4-1 (Commissioner Manning abstained as he did not attend the July 12, 2011 Planning Commission meeting).

2B. Approval of minutes from the meeting of August 23, 2011.

Glenn Miller, 1005 Pebble Beach Drive, had the following comments regarding Item 3A (Clayton Community Church Economic/Fiscal Evaluation [Final Draft]) of the minutes:

- He was speaking on behalf of the Clayton Community Church regarding the August 23, 2011 Planning Commission minutes.
- Church representatives were concerned that they were not specifically asked to present regarding the Economic/Fiscal Evaluation presented at the August 23rd meeting.
- Church representatives were concerned that certain Planning Commissioners made conclusionary comments about the merits of the proposed Clayton Community Church development project.
- Requested clarification to the changes reported in the Contra Costa Times to be made to the Economic/Fiscal Evaluation. *Community Development Director Woltering provided the clarification requested, indicating the changes related to matters brought forward at the August 23rd Planning Commission meeting as follows: 1) correcting information regarding the operating hours of the Clayton Library on Sundays to indicate the Library is open 1:00 p.m. to 5:00 p.m. as opposed to being closed on Sundays as indicated in the report; 2) information will be included in the Evaluation about the Clayton Community Church business community outreach program referred to as "Terrific Tuesdays"; and, 3) the consultant who prepared the Evaluation will consider modifying somewhat the rather conservative methodology used to determine sales tax generation for the applicant's proposed project and the Policy Consistent Alternative in the report.*

- Church representatives are requesting that Planning Commissioners disclose any affiliations they have that may affect their objectivity in considering the Clayton Community Church development application.
- Asked that the minutes being considered be changed to reflect his comments.
- Asked that any action on the minutes be tabled until changes can be made to the satisfaction of the Church.

Commissioner Manning asked who is the specific “applicant” you are referring to when you refer to the Clayton Community Church? Mr. Miller answered that the applicant is Pastor Shawn Robinson.

Community Development Director David Woltering indicated the minutes are not intended as detailed or verbatim minutes, but summary minutes of general commentary and action taken. Mr. Woltering indicated he believed the minutes provide an accurate summary of comments and action taken at the subject meeting as intended.

Commissioner Armstrong moved and Chair Richardson seconded a motion to approve the minutes from the meeting of August 23, 2011, as amended with minor modifications. The motion passed 3-0-2 (Commissioner Johnson and Commissioner Manning abstained as they had not attended the meeting).

Public Hearing

3A. SPR 02-11, Site Plan Review Permit, Second Story Balcony, 227 Stranahan Circle, APN 119-620-051. A request for a site plan review permit to consider a previously-constructed second-story balcony, located on the rear of a two-story single-family residence within the Stranahan subdivision. The balcony measures approximately 60 square feet in area and is located 10 feet above ground level. *Continued from the meeting of August 23, 2011.*

Assistant Planner Milan Sikela presented the staff report. Assistant Planner Sikela indicated that the applicant had constructed the balcony without prior Planning Commission approval or a building permit. Since construction of the balcony occurred, the applicant has now prepared balcony plans for Planning Commission review in order to obtain any required approvals and permits. Assistant Planner Sikela explained that staff had provided three balcony design options for Commission consideration:

- Option A - Approval with Current Design;
- Option B - Approval with Color Modifications; or
- Option C – Approval with Color and Material Modifications.

Commissioner Manning asked the following:

- Was the pre-existing patio cover upon which the balcony was constructed built with the benefit of a building permit? *Lee Ann Franco, 245 Stranahan Circle, indicated that many of the residences in the Stranahan subdivision were constructed with the trellis attached to the rear elevation of the residences, as was the case with the applicant’s residence.*
- How did the balcony come to staff’s attention? *Assistant Planner Sikela indicated that staff became aware of the matter as the result of a complaint by a neighbor.*
- Is removal of the structure an option for consideration? *Assistant Planner Sikela indicated, yes, although not specifically stated in the staff report.*

Commissioner Haydon stated the options to address the proposed colors of the balcony appeared to offer the opportunity to reduce the visual impact of the structure.

Commissioner Johnson asked what specifically were the concerns related to staff by the complainant? *Assistant Planner Sikela indicated that two concerns were mentioned: 1) loss of privacy, and 2) the property owner had not obtained a building permit for the balcony to ensure its structural integrity.*

Commissioner Armstrong indicated concern about the width of the openings between the cables enclosing the balcony as possibly wider than allowed, posing a safety concern.

Commissioner Johnson concurred with Commissioner Armstrong's safety concerns.

The public hearing was opened.

Tom Jensen, the applicant, indicated the following:

- Apologized for not having understood that certain approval(s) and permit(s) may be required for the balcony project.
- Chose to use thinner piping and cable materials as part of the balcony's design to minimize the visual impact of the balcony upon surrounding properties.
- The balcony and staircase offer an opportunity to escape the second-story portion of the home in the circumstance of a fire.

Commissioner Haydon commented that an alternative location for the staircase could have been considered. *The applicant indicated that there are no windows on the opposing side elevation of the neighboring residence, so the current staircase location has minimal visual impact.*

Commissioner Manning indicated that he could not see the staircase from the street and agreed with the applicant that the current location reduces the visual impact.

Commissioner Johnson asked and indicated the following:

- Are there plans to enclose the balcony? *The applicant responded "no."*
- The safety railing should be inspected by the Contra Costa County Building Inspection Department to ensure compliance with Uniform Building Code safety regulations.

Lee Ann Franco, 245 Stranahan Circle, indicated the following:

- She is the complainant who notified staff of this matter.
- The balcony faces her bedroom window and impacted the privacy she has enjoyed the past sixteen years living adjacent to the subject property.
- She would appreciate at least the planting of a tree or trees along the property line to provide her with some level of privacy.
- She supports the staircase where it is presently located.

Mr. Jensen indicated that he would be willing to plant a tree or trees to address any privacy concerns related to the balcony.

The public hearing was closed.

Commissioner Johnson indicated support for planting of trees to provide for the privacy of the neighbor.

Vice Chair Haydon indicated support for Option B, with the addition of planting a tree to address the privacy issue.

Commissioner Manning indicated support for Option B, with the addition of a tree.

Chair Richardson indicated support for Option B, with the addition of a tree.

Community Development Director Woltering suggested the following wording for a possible added condition of approval to address the privacy concern: "A tree (or trees) shall be planted along the east side property line in order to adequately screen the balcony from off-site properties located east of the subject property, to the satisfaction of the Community Development Director."

Commissioner Armstrong indicated support for Option A.

Commissioner Manning suggested the balcony be painted to match the color of the house. *Staff indicated that a condition of approval would be included in the Planning Commission Notice of Decision requiring the balcony and all associated components (stairway, deck, supports, railings) be painted to match the color scheme of the residence.*

Vice Chair Haydon moved and Commissioner Johnson seconded the motion to approve Option B for SPR 02-11, with recommended conditions of approval by the Planning Commission and staff. The motion passed 5-0.

3B. ZOA 05-11, Rezone, Toll Brothers, APNs 119-630-001, 119-630-002, and 119-630-003. A proposal to rezone Lots 1, 2, and 3 in the Diablo Estates at Clayton residential subdivision from R-40-H to R-40. The applicant is Toll Brothers. The Diablo Estates at Clayton residential subdivision is located at the northeast corner of Regency Drive and Rialto Drive.

Director Woltering presented the staff report and indicated the applicant, Toll Brothers, had submitted the application to rezone the subject Lots 1, 2, and 3 of the Diablo Estates at Clayton residential subdivision to comply with a condition of the Site Plan Review Permit approval that the Planning Commission had taken action on at its July 12, 2011 meeting. That condition required the applicant to submit the subject rezone application to address concerns raised in the planning of this subdivision and to assure consistency with other conditions of approval for the project. Director Woltering indicated that, as this project came back through the process to consider a new Site Plan Review Permit approval, the proposed development was not planned in a manner to facilitate the keeping of horses, as would be allowed with the R-40-H zoning classification. There would be only relatively small usable areas in the rear yards, close to the proposed homes, on the subject lots in which to place a paddock or other horse facilities. Additionally, side yard setbacks had been approved to allow for the proposed residences to encroach into typical side yard setback areas which would limit access opportunities for bringing in the horses and related equipment, feed, and supplies. Director Woltering also indicated that there were other concerns raised in the planning process for this project that were not supportive of keeping horses on the property, including proximity to Mount Diablo Creek and the ability to comply with State and regional water quality standards.

Commissioner Manning had the following questions:

- What was the thinking behind the approval of the R-40-H zoning classification for Lots 1, 2, and 3 when the subdivision was still called Diablo Pointe? *Director Woltering*

indicated that the Diablo Pointe Residential Subdivision Initial Environmental Study/Mitigated Negative Declaration identified concerns regarding water quality, detention basins, manure removal, etc. and provided mitigation measures to minimize equestrian impacts. With the current project, these mitigation measures were eliminated as the keeping of horses on the subject lots was no longer anticipated.

- *If a property owner wanted to keep horses on one of the subject lots, could they still do it? Director Woltering indicated that the rear portions of these lots are graded and very steep. In addition, a conservation easement exists on the subject lots precluding alterations to the sloped areas. Given that the residences occupy the majority of the level portions of the lots, there would not be much space left to accommodate horses.*

Commissioner Haydon indicated it appears that there would be very limited space. What would be the impact if we left the R-40-H zoning classification on Lots 1, 2, and 3? *Director Woltering indicated that concerns related to slope stability, drainage, water quality, fire safety (weed abatement), and aesthetics resulted in Condition 2 of the Planning Commission Notice of Decision approving the Site Plan Review Permit for the subdivision. This condition requires the developer to rezone Lots 1, 2, and 3 to R-40. This amendment was agreed to by the developer. Not following through with the amendment could adversely impact the properties in the areas mentioned.*

Commissioner Johnson and Commissioner Armstrong indicated that they concurred with staff recommendation, since this was a requirement from the July 12, 2011 Site Plan Review Permit approval by the Planning Commission.

Chair Richardson indicated the following:

- I understand the need to remove the “H” from the zoning classification.
- In our review and approval of the Site Plan Review Permit, we discussed and agreed upon the rezoning of Lots 1, 2, and 3 to R-40.

The public hearing was opened.

Jim McCormick, 8 El Molino Drive, indicated the following:

- He has been a resident of Clayton since 1976.
- Served on the Clayton City Council from 1980 to 1986.
- Favors eliminating the ability to have horses in this subdivision.

Tom Chatagnier, 38 Rialto Drive, indicated the following:

- Water had drained from the subject property into my back yard in the past, although the installation of drainage improvements (j-ditches and v-ditches) by the prior subdivision owner, Lemke Construction, have addressed past drainage concerns.
- Supports eliminating horse uses in the subdivision.
- Horses can compact the soil and increase water runoff and water contamination.

The public hearing was closed.

Commissioner Johnson indicated that this is a follow-up “house-cleaning” matter from the July 12, 2011 meeting of the Planning Commission and that the Commission should move forward and recommend City Council approval of the requested rezoning.

Commissioner Armstrong indicated he is in favor of the rezone.

Vice Chair Haydon indicated a concern that the property had not been better planned to accommodate horses and that he preferred to maintain the current R-40-H zoning classification on Lots 1, 2, and 3.

Commissioner Manning indicated that, while he initially had some reservations about the rezoning, he believed it prudent to do the rezoning at this time while there is still a single property owner involved.

Chair Richardson indicated that he viewed this rezone application as a "clean-up" item related to the July 12, 2011 Planning Commission approval of the Site Plan Review Permit for the Diablo Estates at Clayton residential subdivision.

Commissioner Johnson moved and Commissioner Armstrong seconded a motion to approve Planning Commission Resolution No. 04-11 which recommends City Council approval of ZOA 05-11. The motion passed 4-1 (Vice Chair Haydon was opposed).

Old Business

4. None.

New Business

5. None.

Communications

6A. Staff

Director Woltering indicated the City has hired a new City Attorney. This new attorney is yet to be formally introduced to staff, but that introduction is to occur shortly. (The new City Attorney is Malathy [Mala] Subramanian with the law firm of Best Best & Krieger, LLP, Walnut Creek, California)

6B. Commission.

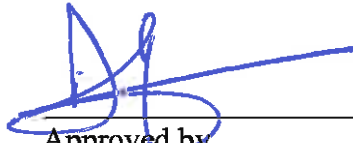
Chair Richardson, Vice Chair Haydon, and Commissioner Armstrong all acknowledged receiving letters inquiring if they were members of the Clayton Community Church. Chair Richardson and Vice Chair Haydon indicated that they had not responded. Commissioner Armstrong responded and indicated that he was not a member.

Adjournment

7. The meeting was adjourned at 9:33 p.m. to the following regularly-scheduled meeting of **September 27, 2011.**



Submitted by
David Woltering, AICP
Community Development Director



Approved by
Dan Richardson
Chair

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