



Agenda

Planning Commission Meeting

7:00 P.M. on Tuesday, November 22, 2011

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. Vice Chair Haydon to report at the City Council meeting on December 6, 2011.

Public Comment

Approval of Minutes

- 2. Approval of minutes from the meeting of October 25, 2011.

Public Hearing

- 3. **SPR 03-11, Site Plan Review Permit, Second Story Balcony**, 308 Mount Sierra Place, APN 119-510-014. A request for a site plan review permit to consider allowing the completion of a partially-constructed second-story balcony and adjoining staircase to be located on the rear of a two-story single-family residence. The project measures a total of approximately 394 square feet in area, which includes an approximate 350 square-foot balcony and 44 square-foot staircase. The project is approximately 9 feet 6 inches in height from ground level to the balcony deck and 13 feet in height from ground level to the top of the balcony railing.

Proposed Action: Consider options and provide direction to staff.

Old Business

- 4. Staff to provide options for Planning Commission consideration regarding amending Chapter 6.05 and Sections 17.16.130, 17.36.070, and 17.60.030 et al. of the Clayton Municipal Code to allow for the keeping of fowl on residential lots that are not located in an Agricultural District.

Proposed Action: Review, discuss, and provide direction to staff.

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New Business

5. None

Communications

- 6A. Staff.
6B. Commission.

Adjournment

7. The next meeting of the Planning Commission is scheduled for **Tuesday, December 13, 2011.**

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, October 25, 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. Commissioner Manning to report at the City Council meeting on November 1, 2011.

Public Comment

Glenn Miller, 1005 Pebble Beach Drive, indicated he had concerns that the parking lot at the southeast corner of Main Street and Oak Street did not comply with Americans With Disabilities (ADA) requirements and other pertinent regulations such as stormwater, trash, etc. *Community Development Director David Woltering offered that this matter should have been directed to staff in an administrative forum at City Hall using the City's standard code enforcement process. Director Woltering added that staff would research the matter and contact the Planning Commission and Mr. Miller with the results of the research.*

Approval of Minutes

2. Approval of minutes from the meeting of September 13, 2011.

Commissioner Manning moved and Vice Chair Haydon seconded a motion to approve the minutes, as amended. The motion passed 5-0.

Public Hearing

3. **ENV 01-08, DP 01-08, MAP 02-09, Creekside Terrace Mixed Use Project, City of Clayton**, 1005 Oak Street, 1007 Oak Street, and a third non-addressed parcel west of and upslope from Mitchell Creek (APNs 119-050-009, 119-050-034, and 119-050-008). A review to consider a one-year extension on the Creekside Terrace Development Plan and Vesting Tentative Subdivision Map which were previously approved on July 6, 2010. This request is in accordance with Section 16.06.030 and Section 17.28.190 of the Clayton Municipal Code. The project site is located in the Town Center of Clayton, on the west side of Oak Street between High Street and Center Street. The project involves the redevelopment of two properties, which are currently developed, generally level, and serviced by utilities. The third parcel, located immediately to the west, is an upsloping undeveloped property with Mitchell Creek traversing the eastern edge of that parcel near the toe of slope. The project would result in the construction of a two-story mixed-use building, incorporating a western-style architectural theme suggested for this area in the Clayton Town Center Specific Plan. The first floor is comprised of approximately 7,200 square feet of retail commercial space to be divided into approximately four to five for-

sale commercial condominium units. The second floor includes seven for-sale residential condominium units. The residential units are one-bedroom and several of the units contain dens. A terrace is proposed on the creek (west) side of the second story. The project includes the previously adopted entitlements:

- Initial Environmental Study/Mitigated Negative Declaration (ENV 01-08);
- A Development Plan (DP 01-08); and
- A Vesting Tentative Subdivision Map (MAP 02-09).

Director Woltering presented the staff report; distributed a letter from Glenn Miller, 1005 Pebble Beach Drive; and indicated the following regarding the Creekside Terrace mixed use project:

- The project was approved the City Council resolution on July 6, 2010.
- Per the Clayton Municipal Code, Development Plan approvals are valid for 18 months and can be extended incrementally for a maximum of one year by Planning Commission or City Council approval.
- The project's Vesting Tentative Map had been extended by State mandate and, as a result, is automatically extended until July 6, 2014.
- The Mitigation Measures and Conditions of Approval that were adopted as part of the City Council's approving resolution are still valid and would be carried forward for the life of the entitlements.

Director Woltering addressed Mr. Miller's letter with the following key points:

- When the City identifies a new developer for this project, a new development agreement would be established.
- Project entitlements are in accordance with applicable City, regional, and State laws.
- Parking adequacy (including in-lieu fees and related parking issues) is addressed by Condition 19 and was thoroughly discussed in the project's Initial Environmental Study/Negative Declaration (IES/MND).
- The Town Center parking waiver period was extended until June 2013 per adoption of Ordinance No. 428.
- The Level of Service (LOS) for Clayton intersections is at A or B, which is an excellent rating. The LOS rating takes into consideration the safety conditions at a given intersection.
- All project-related documentation will be available as part of the City's due diligence.
- Hydrology, stormwater, and related issues are addressed in the Conditions of Approval.

Commissioner Armstrong asked inquired if the application falls within the extended parking period. *Director Woltering answered "Yes."*

Vice Chair Haydon indicated that the new extension date from January 6, 2012 to January 6, 2013 should be including in the wording within the Planning Commission resolution.

Commissioner Manning inquired about the status of the Department of Fish and Game (DFG) mandating an increase in setback from top of creek bank that was instituted statewide and added that he recalled the City was trying to approve project-related entitlements prior to the DFG deadline in order to enable the project site to still be developed, since the new DFG creek bank setback would have rendered the project site unbuildable. *Director Woltering indicated that the project entitlements were approved prior to the DFG deadline and that DFG had reviewed the project and found it acceptable, as documented in the project file.*

Commissioner Manning inquired about the status of the prospective developer that the City had been working with to develop the project. *Director Woltering indicated the prospective developer encountered financial problems which prevented him from moving forward with the project. The City took over and completed the entitlement (i.e., approval) process. The City is now looking for a new developer to complete the project.*

The public hearing was opened.

Glenn Miller, 1005 Pebble Beach Drive, indicated the following:

- My concern was that development-oriented rules changing over time be adequately addressed and disclosed so that the project complies with current regulations.
- Being a Clayton resident that picks up and drops off my child in the area of the Center Street and Oak Street to attend Mount Diablo Elementary School, I just wanted to ensure that safety precautions are taken and current standards are adhered to as the project is developed in the future.
- My understanding is that improvements in infrastructure, with regard to the installation of stoplights in that area, would be funded by the City. *In response, Director Woltering indicated that the traffic study in the project's IES/MND analyzed the intersection and found that no adverse conditions existed at that location. In addition, the analysis mentioned that the City would work with the developer and applicable traffic-related agencies, as needed, to ensure project compliance with current safety standards, but did not specifically require the installation of traffic signals or that the City would fund any such infrastructure.*

Commissioner Manning indicated that, although some minor improvements are anticipated at the subject intersection as the project is developed in the future, he does not foresee the installation of traffic signals at the subject intersection, based on approved project documents and applicable regulatory provisions. *Director Woltering concurred and added that the project's Conditions of Approval do not require the installation of traffic signals.*

Commissioner Johnson indicated that the project was thoroughly reviewed and subsequently approved by the City, in compliance with applicable laws and regulations.

Commissioner Armstrong indicated that he supported granting the extension.

Vice Chair Haydon indicated that the underlying project issues have been adequately addressed and that he is in support of the extension.

Commissioner Manning indicated that tonight's discussion does not involve modifying the project in any way, nor does it entail changing project compliance with applicable laws and regulations, but, rather, is merely an extension.

Chair Richardson indicated he concurred with comments expressed by other members of the Planning Commission and was in support of the extension.

Commissioner Armstrong moved and Commissioner Manning seconded the motion to approve Planning Commission Resolution No. 05-11, as amended with the addition of extension dates to be listed in the wording of the Resolution. The motion passed 5-0.

Old Business

4. None.

New Business

5. Discussion regarding amending Chapter 6.05 and Sections 17.16.130, 17.36.070, and 17.60.030 et al. of the Clayton Municipal Code to allow for the keeping of fowl on residential lots that are not located in an Agricultural District.

Director Woltering presented the staff report and indicated the following:

- The keeping of the chickens at a residential property was brought to staff's attention by a complaint that was filed with the City's Code Enforcement Officer.
- The Clayton Municipal Code currently prohibits the keeping of chickens on residential properties located outside of the City's Agricultural District.
- During communications with staff and in the letter submitted to the City, the subject property owners who were keeping the chickens have indicated that the chickens provide "pet therapy" for their son who has Tourette Syndrome.
- To clarify, tonight's discussion should be focused on whether or not the Planning Commission will direct staff to move forward on researching the issue, analyzing comparable jurisdictions' regulations, and providing various options for Planning Commission consideration, including amending the Clayton Municipal Code to address this matter.

Commissioner Manning indicated that one of his concerns with the keeping of chickens is the noise generated by such an activity.

Vice Chair Haydon indicated that he was in support of directing staff to conduct further research on the issue.

Commissioner Johnson indicated that she has concerns over the keeping of chickens on smaller-sized residential lots and that odors could impact neighboring properties.

Chair Richardson indicated he was also in support of directing staff to conduct further research.

Commissioner Armstrong indicated that he was in support of directing staff to conduct further research on the issue, but that such an activity, if allowed, should only be allowed with approval of a use permit with a specific finding of special circumstances.

Director Woltering clarified that review of such an activity through a use permit process with a finding of special circumstances would require the activity to meet detailed standards, requirements, and provisions that would address the impacts involved with such a use and ensure that these impacts would not negatively affect surrounding properties. Director Woltering reiterated that tonight's discussion, however, does not relate to these specifics but, rather, only to whether or not staff will be directed to research the issue and provide options for Planning Commission consideration.

Commissioner Johnson indicated that prohibitions on the keeping of chickens on residential lots located outside of the City's Agricultural District were established to maintain a quality residential environment within the City and to avoid detrimental impacts to residential properties.

In addition, there is already a zoning district within the City—the Agricultural District—which allows the keeping of chickens.

Chair Haydon indicated that tonight's discussion does not address the merits of such a use but, rather, only whether or not staff should be directed to move forward on further researching the issue. In that sense, research is a good thing and would be helpful in analyzing the components of this sort of activity.

Commissioner Manning indicated that, for example, the City's Municipal Code allows, by right, the keeping of dogs. As a comparison point, several dogs—especially large dogs—create a much greater impact than chickens. In looking at the bigger picture, it should be noted that exceptions may apply to a policy, and we should consider if exceptions are warranted or not, based on focused research and accurate information. The City's decision makers are not draconian in nature.

Chair Richardson indicated that, once staff has returned with research results and options for consideration, the Commission can thoroughly analyze the data provided.

Commissioner Johnson indicated that certain prohibitions are established for a reason and that, prior to purchase of a residence, it is a prospective homebuyer's responsibility to review all governing regulations applicable to a residential lot prior to purchase of that lot in order to be informed about what is allowed and what is prohibited.

Director Woltering indicated that, based on Planning Commission comments received by staff, there appeared to be a consensus to direct staff to conduct research and provide options for Commission consideration at a future meeting. Based on this consensus and direction, code enforcement related to this matter will be placed on hold until the Commission reviews the information presented by staff at a future meeting and provides staff with further direction on how the Commission wishes to proceed on this matter.

By a 4-1 consensus, the Planning Commission directed staff to initiate and implement the conducting of research and return to the Commission with options to address this matter.

Communications

6A. Staff – None.

6B. Commission – None.

Adjournment

7. The meeting was adjourned at 7:55 p.m. to the following regularly-scheduled meeting of **November 8, 2011.**

Submitted by
David Woltering, AICP
Community Development Director

Approved by
Dan Richardson
Chair

Plng Comm\Minutes\2011\1025

PLANNING COMMISSION STAFF REPORT

Meeting Date: November 22, 2011

From: Milan J. Sikela, Jr. *MS*
Assistant Planner

Subject: Second Story Balcony at 308 Mount Sierra Place
Site Plan Review Permit (SPR 03-11)

REQUEST

A request for approval of a site plan review permit to allow a second-story balcony and adjoining staircase to be located on the rear of a two-story single-family residence.

PROJECT INFORMATION

Applicant/Location: Mark Lingenfelter
308 Mount Sierra Place
Clayton, California 94517
APN 119-510-014
(See **Attachment 1** for Location Map)

General Plan Designation: Low Density — Single Family Residential (1.1 to 3.0 units per acre).

Zoning: Single Family Residential R-10 District (10,000 square-foot minimum lot area).

Environmental Review: Categorically exempt per Section 15311(a), Class 11 of the California Environmental Quality Act (CEQA) Guidelines.

Public Notice: On November 10, 2011, a public hearing notice was posted at the notice boards, mailed to property owners within 300 feet of the site, and e-mailed to the newspapers.

Agency Referrals The City Engineer had no comments. The Contra Costa County Building Inspection Department, Contra Costa County Fire Protection District, and Contra Costa Water District did not respond.

Authority Section 17.44.020 of the Clayton Municipal Code (CMC) authorizes the Planning Commission to approve a site plan review permit in accordance with the standards of review in CMC Section 17.44.040.

BACKGROUND AND ANALYSIS

The applicant is requesting Planning Commission approval of a site plan review permit to allow a second-story balcony and adjoining staircase to be located on the rear of a two-story single-family residence. This project has already been partially completed and measures a total of approximately 394 square feet in area, which includes an approximate 350 square-foot balcony and 44 square-foot staircase. The height of the project is approximately 9 feet 6 inches from ground level to the balcony deck and 13 feet from ground level to the top of the balcony railing. Project description, site plan, architectural elevations, and planting plan are provided as **Attachment 2**.

The applicant has provided balcony and staircase plans as the preferred option for the proposed project (identified as Option 1). In addition, the applicant has also provided a secondary option for Commission consideration (identified as Option 2) which entails modification of the balcony in favor of a patio cover (see **Attachment 2, Sheet 7**).

The applicant has indicated fire safety, mitigation of southern exposure to the sun, and enjoyment of views from the subject property as the reason for the proposed project (Option 1). Prior to construction of the balcony, a patio cover previously existed in the same location. The patio cover was in poor condition, with some of its key structural supports experiencing dry rot.

Staff notes that the proposed project enhances the visual interest on the rear elevation of the residence in addition to replacing a previously existing structure that posed health and safety hazards. The project adds depth and articulation to the large monolithic two-story expanse of the rear façade by projecting outward from the south wall of the residence, lending a three-dimensional feel to the rear façade.

However, staff has concerns that the balcony would intrude on the privacy of adjacent properties by enabling someone standing on the structure to easily see into the rear yards of neighboring lots. The property owner has constructed the balcony with a tapered design so that it is narrower at the rearmost portion of the balcony than it is where it connects with the residence, reducing the area of the balcony at the point nearest to the rear property line. However, even with the tapered design, as well as the fact the rearmost portion of the balcony is 21 feet from the rear property line, staff notes that impacts to privacy exist.

To provide project screening and privacy, the applicant has provided a planting plan (see **Attachment 2, Sheet 5**). The planting plan shows the planting of trees and vegetation along the left side and rear property lines as well as the planting of trees in a planter box to be installed along the balcony railing from the southeast corner of the residence to where the staircase connects with the balcony. In addition to providing screening and privacy, the vegetation will also provide visual softening of the project. It is the property owner's intent that the planter boxes would remain until the trees planted on the left side and rear property lines grow to a sufficient height to provide screening.

Setback Analysis

The project meets the R-10 District setback standards as shown below.

Required Setbacks	Setbacks Prior to Construction	Setbacks After Construction	Project Compliance
Front Setback 20'	North 72'	North No Change	Yes
Side Setback 10' minimum	West 43'	West No Change	Yes
	East 26'	East No Change	Yes
20' aggregate	Aggregate 69'	Aggregate No Change	Yes
20' exterior	Exterior 43'	Exterior No Change	Yes
Rear Setback 15'	South 34'	South 21'	Yes*

*See discussion below.

Section 17.36.030 of the Municipal Code exempts open stairways from setback requirements as long as such structures “do not obstruct the light and ventilation of any adjoining parcel of land.” Since the access stairway to the balcony does not create a light or ventilation obstruction, the stairway portion of the project would qualify for this exemption and would not be counted against the required setbacks.

Residential Floor Area Analysis

Section 17.78.030.D.3 of the Municipal Code excludes balconies and other structures (stairways) from floor area calculations “where at least one of the longest dimensions is unenclosed.” Since the balcony and stairway are unenclosed, these structures would not be subject to floor area requirements.

Compliance with Uniform Building Code Requirements

During discussions with City staff, the applicant was informed that a building permit would need to be obtained from the Contra Costa County Building Inspection Department for the project. As part of the building permit process, the structure will undergo formal inspections as part of the building inspection process and be subject to all applicable Uniform Building Code requirements. Staff has included a condition that the applicant provide to the Community Development Director a copy of the finalized permit issued by the Contra Costa County Building Inspection Department for the balcony.

RECOMMENDATION

Staff recommends that the Planning Commission review the options provided by staff and, if the Commission determines Option 1 meets the Site Plan Review Permit standards, approve Site Plan Review Permit SPR 03-11 (Option 1), based upon the following findings and subject to the following conditions.

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 that Site Plan Review Permit SPR 03-11 (Option 1), as conditioned:

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

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

Proposed Conditions of Approval

These conditions of approval apply to the Lingenfelter Residence Site Plan, Architectural Elevations, and Planting Plan, prepared and submitted by the applicant, date stamped October 28, 2011.

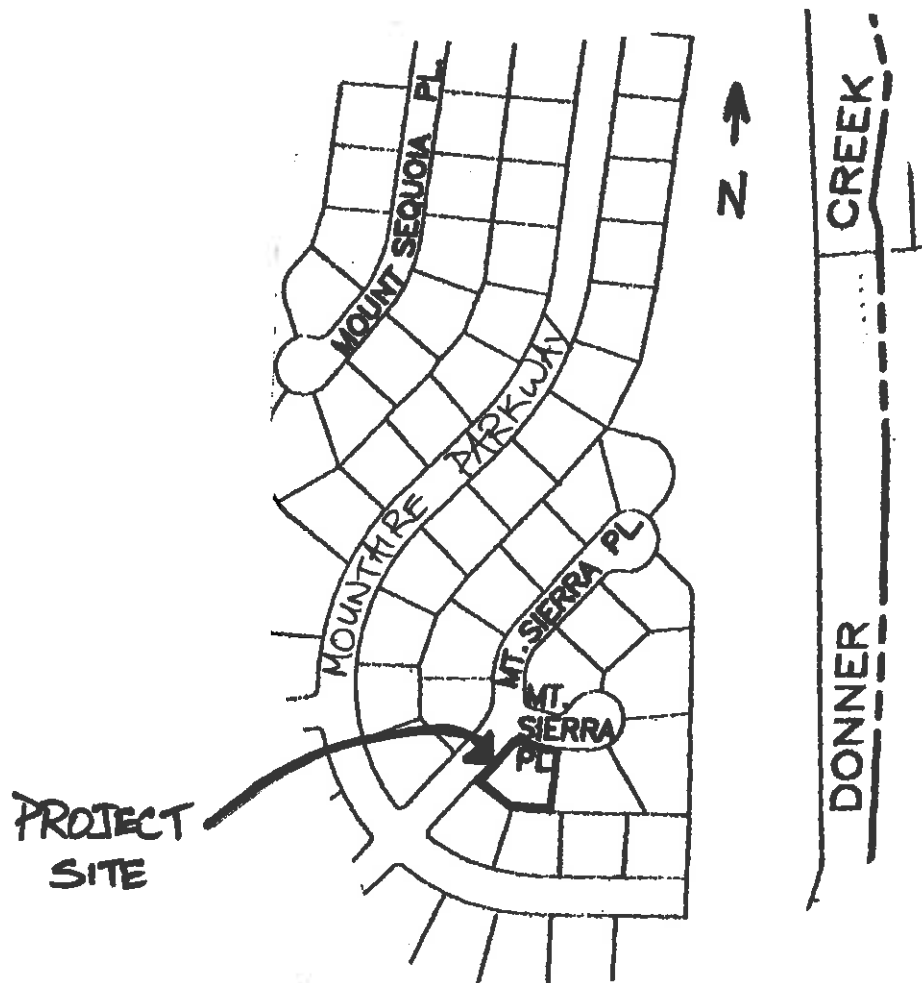
1. The balcony and all associated components (stairway, deck, supports, railings) shall be painted to match the color scheme of the residence.
2. Trees and vegetation shall be planted along the east side property line, rear property line, and on the balcony, in the location indicated on Sheet 5 of Attachment 2 of the project staff report.
3. The applicant shall provide to the Community Development Director a copy of the finalized permit issued by the Contra Costa County Building Inspection Department for the balcony.
4. 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, judgments, 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, and any environmental review conducted under the California Environmental Quality Act for this entitlement and related actions.

ATTACHMENTS

- 1 Location Map
- 2 Lingenfelter Residence Site Plan, Architectural Elevations, and Planting Plan, prepared and submitted by the applicant, date stamped October 28, 2011
- 3 Photographs of project site, prepared and submitted by the applicant, date stamped October 28, 2011

SPR\2011\03-11.sr.pc.11.22.11

ATTACHMENT 1



Location Map
308 Mount Sierra Place
APN 119-510-014

ATTACHMENT 2

Mark and Diane Lingenfelter

308 Mt. Sierra Pl

Subject: Proposed 2nd floor balcony on back of house

The purpose of the proposed balcony is to provide shade to our 1st level, provide a fire escape on the second level, and to occasionally enjoy the views of Mt.

Diablo. We respect the privacy of our neighbors. We did take down 3 old structures, with the old patio cover being about 12' high because they were old and rotting. We also took down 2 apple trees which blocked the two yards to a certain degree but were quite messy. The neighbors behind also removed some bushes/trees which opened the two yards up more.

We are proposing new trees and/or shrubs to fill these gaps. We are also willing to consider what the neighbors would like to see planted on our side of the fence as long as they can be kept trimmed to 15 feet. The shrubs we are proposing are Silver Sheen Pittosporum which can grow to 20 feet and Laurus Saratoga trees which are ever-green and grow to 16 feet high and 12 feet wide.

We have 2 options to consider:

Option 1: 2nd floor balcony. We plan to build a planter box from the east side starting at the house all the way across the south side. We will plant Silver Sheen Pittosporum shrubs to 6 feet high to create the initial blockage until the ground shrubs and trees grow tall enough to block our neighbor's yards.

Option 2: Use the same structure without the railings and stairs as a patio cover only.

RECEIVED

OCT 28 2011

**CLAYTON COMMUNITY
DEVELOPMENT DEPT**

PROJECT
DESCRIPTION
SHEET

10/20/2011

PROPOSED DECK

Mark & Dianne Lumbenfelter
308. MT. STERNA PL.
CLAYTON, CAL

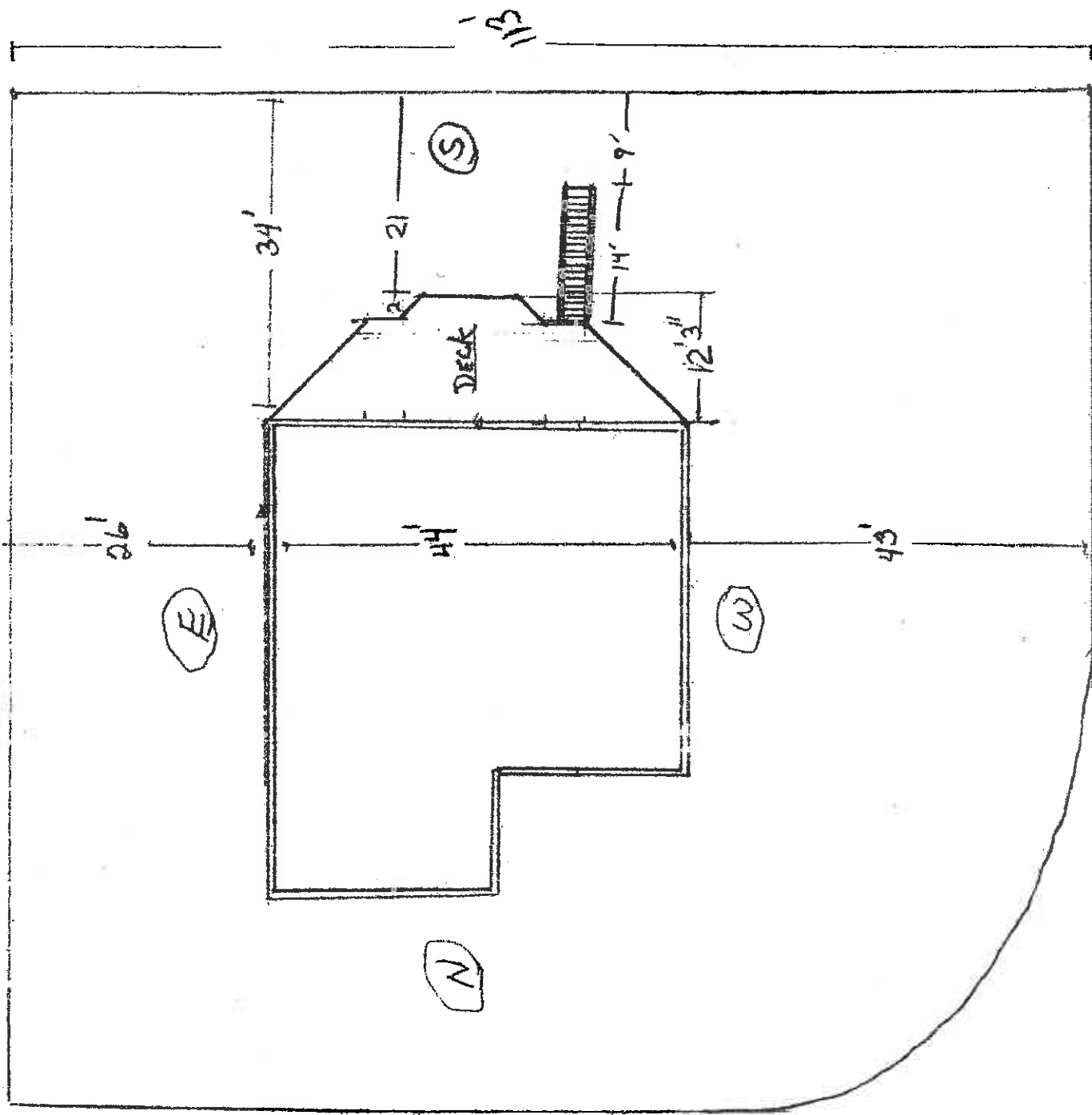
<u>CONTENTS</u>	
①	<u>OVERVIEW PLAN</u>
②	<u>FRAMING</u>
③	<u>SOUTH ELEVATION @ RAIL</u>
④	<u>EAST ELEVATION DECK & RAIL</u>
⑤	<u>OPTION #1 OVERVIEW PLANNING</u>
⑥	<u>OPTION #1 SOUTH ELEVATION PLANNING</u>
⑦	<u>OPTION #2 RATIO COVER ONLY</u>

MARK & DEANE
 LINGENFELTER
 308 MT. SIERRA PL
 CLAYTON
 PROPOSED DECK

1/16" SCALE

Plot of Deck
 OVER VIEW

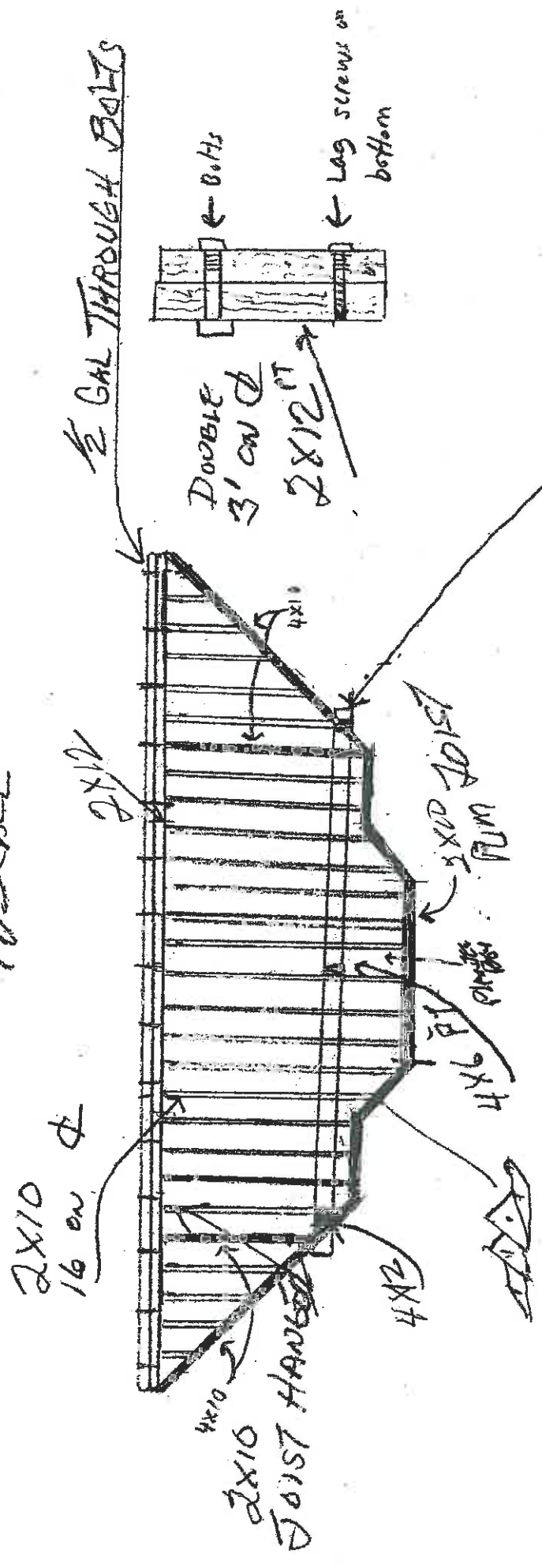
1-7



1-7

2-7

1/8 SCALE

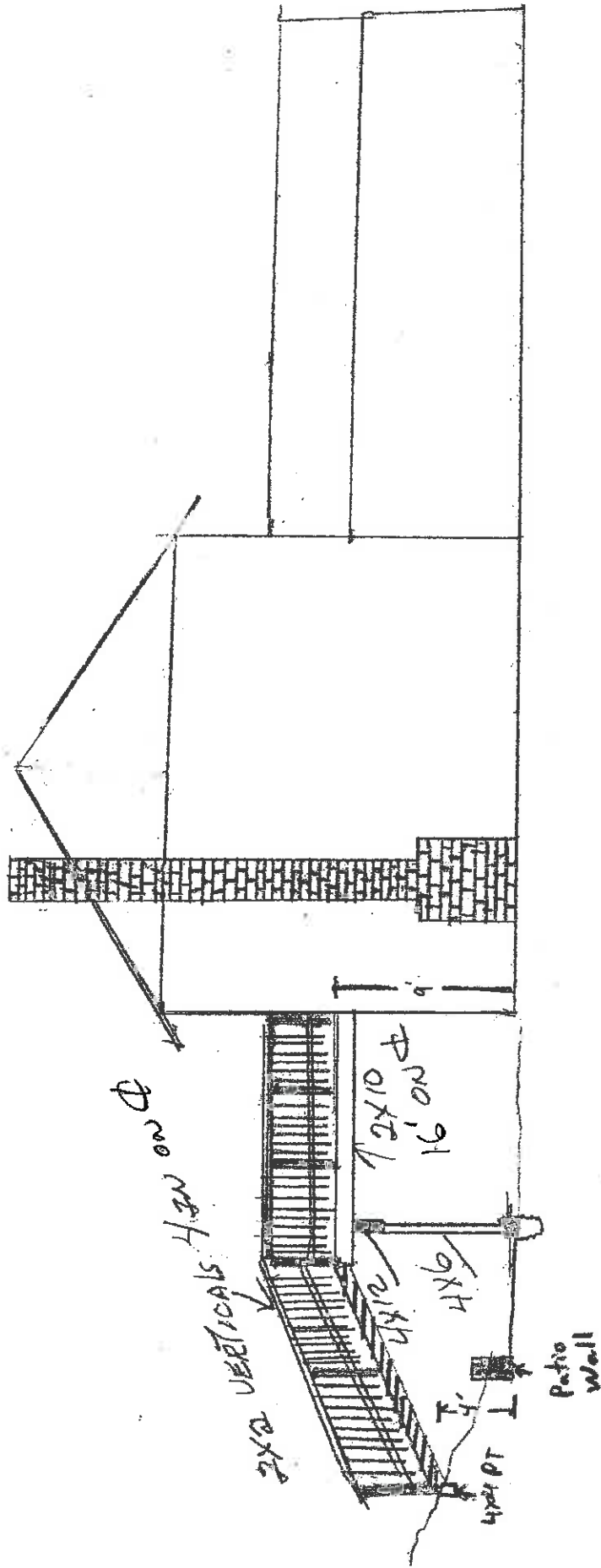


Framing Plan

MARK & DRAKE
LAW FIRM
308 MT. SIDA PL.
1/8 SCALE

1/8 SCALE

4-7



EAST ELEVATION

SHEET
4

Planting / Tree Studies

5-7

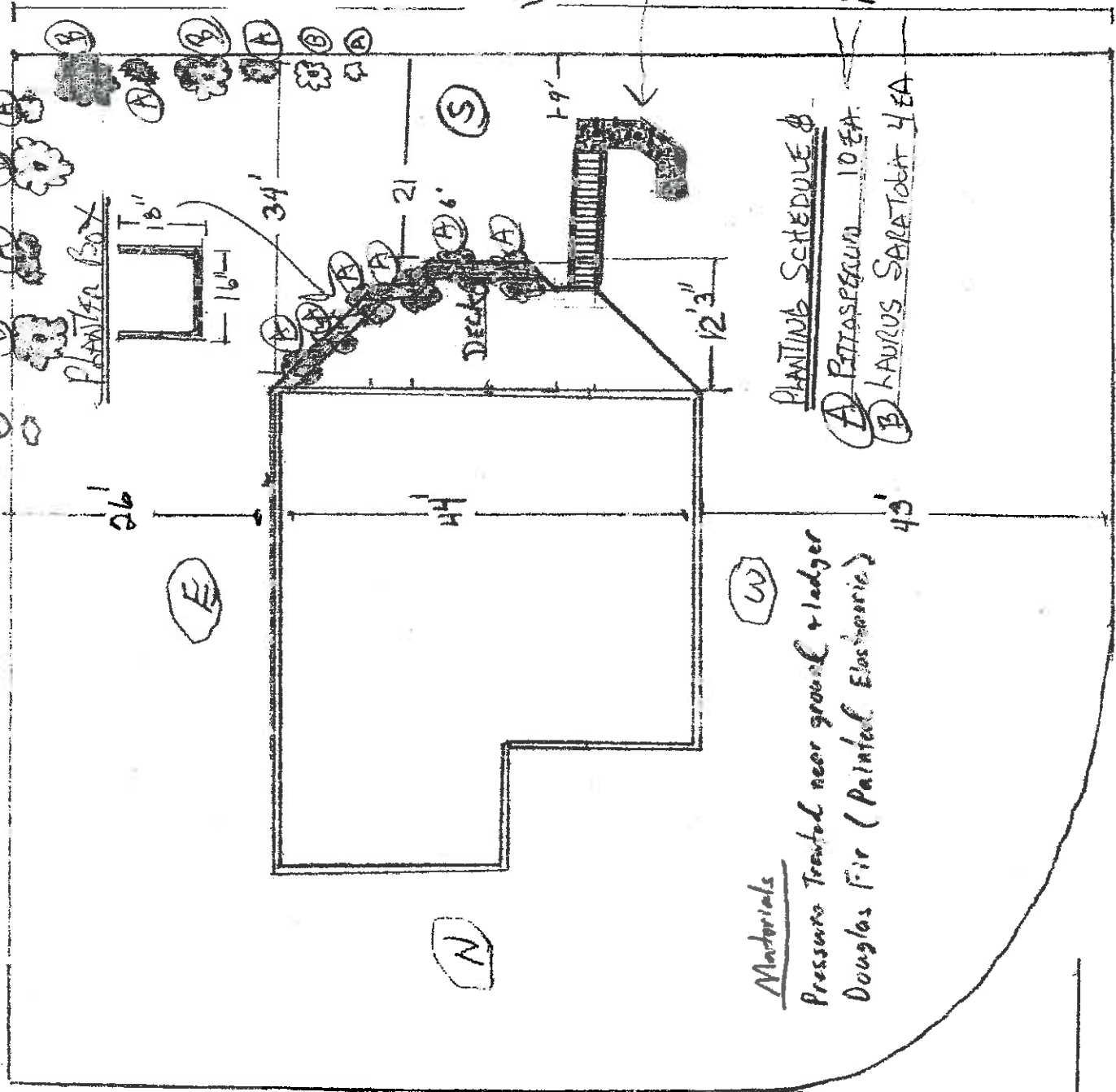
MARK & DEANNE
 LINGENFELTER
 308 MT. SIERRA PL
 CLAYTON
 APPROVED DRAFT

1/16 SCALE

Materials
 Pressure Treated near ground + ledger
 Douglas Fir (Painted Exterior)

Plot Plan
 OVER VIEW

Option #1



Planting Schedule
 A PITISPAURUM 10 EA.
 B KALYUS SARATOGA 4 EA.

PAVED STAIR
 PLAN

6' on deck
 10' on fence
 15' tall 12' wide

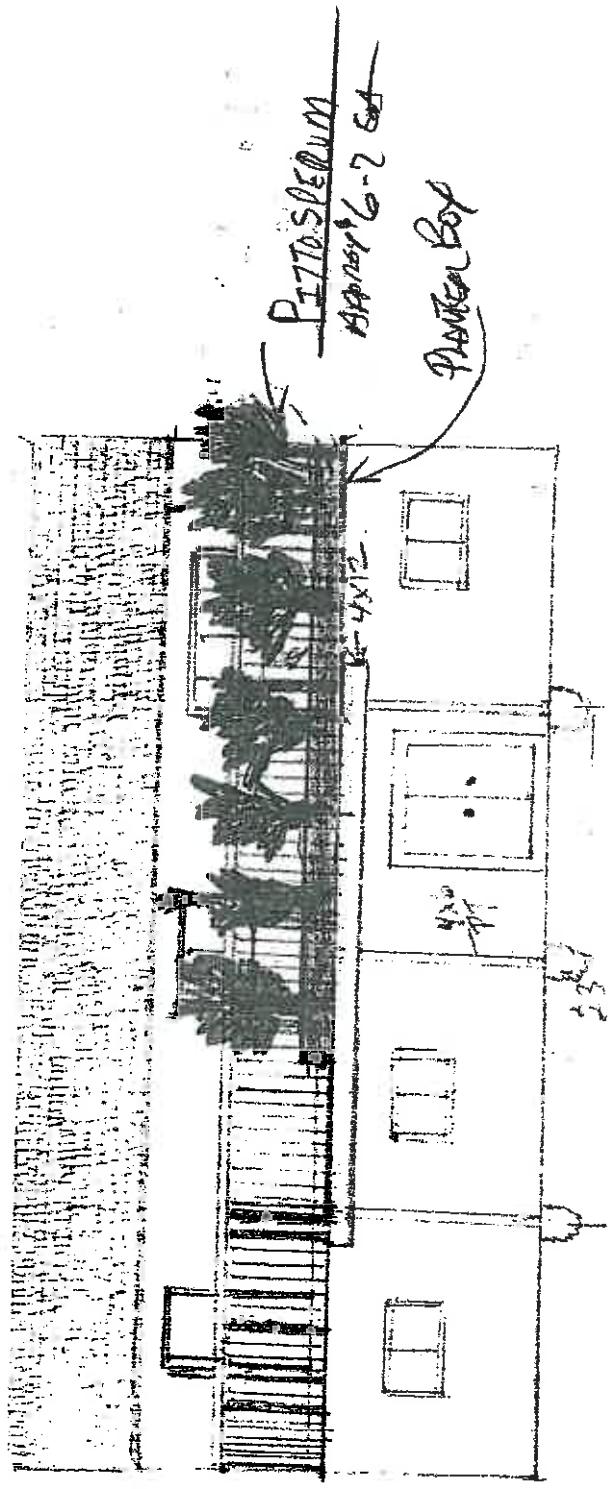
SHEET
 5

6-7

Plaster Boy @ SHAWBS

1/8 SCHEDULE

Option #1



SOUTH ELEVATION (S)

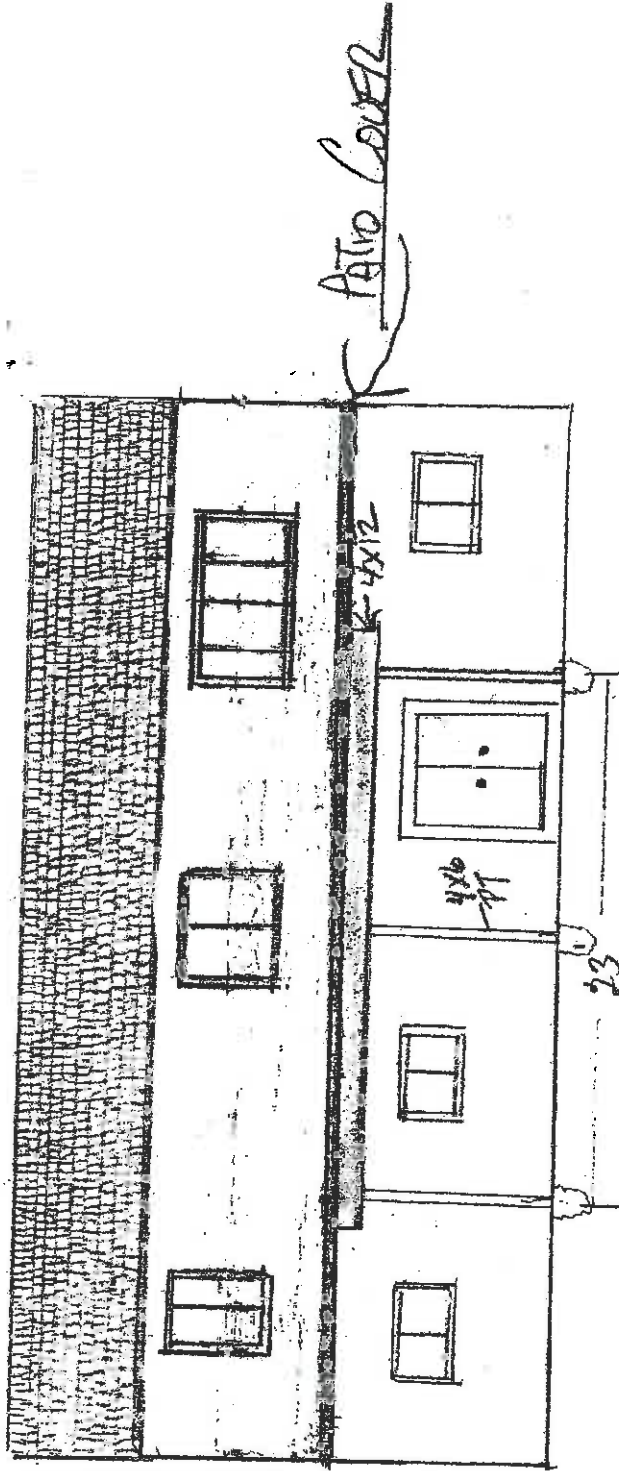
sheet 6

7-7

Option "2"

Patio Cover

1/8 scale



South Elevation (S)

Sheet
7

ATTACHMENT 3



Memorandum

To: Chair Richardson and Planning Commissioners

From: David Woltering, Community Development Director 

Date: November 22, 2011

Subject: Agenda Item 4 of the November 22, 2011 Planning Commission Meeting Regarding Possible Amendment to the Clayton Municipal Code to Allow the Keeping of Fowl on Residential Lots that are not Located in an Agricultural District under Special Circumstances

BACKGROUND

This matter was discussed by the Planning Commission at its October 25, 2011 meeting. At that meeting, staff described having received a complaint about chickens being kept in the rear yard area of a residential lot within Clayton, in conflict with the City's Municipal Code. The family with the chickens has a circumstance in which their son has Tourette Syndrome and the chickens have become comforting pets to him. In fact, the nine year old boy's symptoms, "tics", are substantially reduced as a result of this relationship. Staff has confirmed the child has Tourette Syndrome, based on information received from the child's doctor. A copy of the staff report from the October 25th meeting is attached (see **Attachment 1**). After receiving the staff report, receiving public testimony, and discussing the matter, the Planning Commission, by a 4-1 vote, directed staff to do further research and return with options for the Commission to consider, including possible amendment to the City's Municipal Code, to allow the keeping of chickens in residential zones under special circumstances.

Staff confirmed by contacting other agencies that some other local jurisdictions in the area do allow chickens in residential areas, subject to compliance with specific conditions, such as limiting the number of chickens, allowing only hens, requiring a minimum lot size, etc. (see **Attachment 2**). Additionally, staff has asked the family involved to check their subdivision Conditions, Covenants, and Restrictions (CC&Rs) to determine if chickens ("fowl") are permitted. Mr. and Mrs. Casagrande informed staff that the CC&Rs for their subdivision specifically prohibit keeping of "poultry" (see **Attachment 3**). The CC&Rs are privately enforced as a civil matter between property owners. This is important information because, even if the City were to go through the process to modify its Municipal Code to allow chickens (i.e., fowl) under special circumstances, the CC&R provision cited could be enforced as a civil matter.

Initially, the family asked if the City would initiate an amendment to its Municipal Code to allow them to keep the chickens, given the special circumstances involved. The family has followed-up with a recent letter to staff, dated November 16, 2011 (see **Attachment 4**), specifically requesting "reasonable accommodation" under the Americans with Disabilities Act (ADA) to be allowed to keep the chickens to "provide comfort and therapy to their son." Staff has discussed

this matter with the City Attorney's office and it does appear the family can use this provision of federal law to keep the chickens. However, conditions can be applied, including limiting the number of chickens, addressing the sanitary needs, and stipulating that this accommodation does not run with the land, but is exclusively for the circumstance involved. Accordingly, if the family moves or the child no longer is in need of the chickens as a form of therapy, the chickens would need to be removed. It is likely that the "reasonable accommodation" would apply to the CC&R provisions, as well. However, that is a private matter that would need to be addressed by the property owners involved.

RECOMMENDATION

Staff recommends the City enter into a "Reasonable Accommodation Agreement" with the family involved and not pursue a broader Municipal Code amendment regarding this matter. The Agreement would have conditions, including those described above.

ATTACHMENTS

- 1 October 25, 2011 Planning Commission Staff Report
- 2 Summary of Selected Communities' Regulations Pertaining to Chickens
- 3 Excerpt from Jeffry Ranch Declaration of Restrictions pertaining to Livestock and Poultry, dated October 5, 1976
- 4 Letter to Code Enforcement Officer Rita Howe from Mr. and Mrs. Casagrande, dated November 16, 2011

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Memorandum

To: Chair Richardson and Planning Commissioners

From: David Woltering, Community Development Director

Date: October 25, 2011

Subject: Agenda Item 5 of the October 25, 2011 Planning Commission Meeting Regarding Possible Amendment to the Clayton Municipal Code to Allow the Keeping of Chickens in Residential Neighborhoods under Special Circumstances

BACKGROUND

Recently, staff received a complaint about chickens being kept in the rear yard area of a residential lot within Clayton. The complaint focused on concerns regarding noise and odors related to the keeping of chickens. Clayton Municipal Code Section 6.05.010 prohibits “fowl” in residential neighborhoods (see **Attachment 1**). Staff mailed out a Courtesy Notice of Violation along with a copy of Section 6.05.010 to the property owners who were keeping the chickens. Additionally, staff contacted the property owners by telephone and conducted a site visit to the subject property.

As follow-up work was performed on the issue, staff was made aware of the circumstances surrounding the keeping of the chickens on the subject property. Staff learned that the family’s nine year old son has Tourette’s syndrome and that he has bonded very closely with the chickens. There are a total of five chickens—all hens and no roosters. The parents, Mr. and Mrs. Casagrande, are extremely protective of the chickens, given that the relationship their son has with the chickens provides him comfort and has lessened the symptoms of Tourette’s syndrome. The family views the relationship their son has with the chickens as a form of “pet therapy”.

Mr. and Mrs. Casagrande have submitted a letter requesting that the City initiate an amendment to the Municipal Code to allow the keeping of chickens under special circumstances (see **Attachment 2**). Staff has responded in writing to their letter (see **Attachment 3**) and indicated that the matter would be brought before the Planning Commission at the October 25, 2011 meeting. Essentially, if the Commission directs staff to initiate the process for consideration of the amendment, staff will research how other comparable jurisdictions in the surrounding area regulate the keeping of chickens in residential neighborhoods and the criteria that these jurisdictions have established to allow for such an activity. Staff would then return to the Commission with a report outlining options for consideration for a possible amendment to the Municipal Code regarding this matter. These options could range from continuing prohibition of chickens in residential neighborhoods, other than as stipulated in Section 17.36.070 of the Municipal Code (see **Attachment 4**), to allowing chickens on a case-by-case basis with a use permit, assuming a “special circumstance” exists. From staff’s perspective, if the Commission

considers the option of allowing chickens in residential neighborhoods under special circumstances, certain criteria should be established for review and approval of such requests. Criteria for Commission consideration include the maximum number of chickens allowed, location of structures and open areas where the chickens are kept (including minimum setbacks from property lines, minimum number of structures, and minimum size of outdoor area), type of chickens (hens only; no roosters), sanitation, and compliance with any other applicable agency or jurisdictional regulations required by, but potentially not limited to, County Health Department standards, County Building Inspection Department codes, Mosquito Abatement District provisions, and State humane laws. Similar criteria exist in Section 17.36.060 of the Municipal Code regarding regulations for the keeping of horses (see **Attachment 4**).

RECOMMENDATION

Staff recommends the Planning Commission direct staff to initiate and implement the process to consider whether chickens could be kept in residential neighborhoods in the City of Clayton under special circumstances.

ATTACHMENTS

- 1 Clayton Municipal Code Section 6.05.010
- 2 Letter to Code Enforcement Officer Rita Howe from Mr. and Mrs. Casagrande, dated October 6, 2011
- 3 Letter to Mr. and Mrs. Casagrande from Code Enforcement Officer Rita Howe, dated October 6, 2011
- 4 Clayton Municipal Code Sections 17.36.060 and 17.36.070

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ATTACHMENT 2

SUMMARY OF SELECTED COMMUNITIES' REGULATIONS PERTAINING TO CHICKENS

Chickens	Goats	Bees
Allowed with permit from Community Development and Environmental Resources Department. Roosters not permitted. Up to 6 hens permitted. Enclosure must be separate from owner's house and 50' from all other houses or all adjacent owners must grant permission. Coops must be maintained in sanitary manner. Enclosure must be 25' from houses, excluding owner's.	Allowed for weed abatement for a limited period of time. 1 goat per 150 sq. ft. of weed abatement area for a maximum of 60 days. Goats must be fenced in. Male goats prohibited. Maximum 2 female goats over 1 year old.	Not permitted. Not addressed in municipal code.
20,000 sq. ft. minimum lot size. Maximum of 12 on first 20,000 sq. ft. 1 chicken per 1,500 sq. ft. after that. Coops must be 25' from property lines. Enclosures must be 20' from any dwelling, church or school. Roosters not permitted.	20,000 sq. ft. minimum lot size. 1 goat per 10,000 sq. ft. of lot area. Same requirements as other livestock. Not expressly prohibited; goats specifically included in definition of "animals" in ordinance.	No minimum lot size. Maximum of 2 apiaries for properties under 10,000 sq. ft. 1 additional hive for every 10,000 sq. ft. thereafter. Apiaries must be 25' from property lines. Not addressed in municipal code.
1.5 small animals (Pigeons, Doves, Rabbits, Ducks, Chickens, Geese) allowed per 1,000 S.F. of lot area, not to exceed 15. Enclosures must be 25' from all abutting dwellings. Enclosures must be maintained in sanitary manner. No nuisances. Coops must be 20' from door or window of any building. No nuisances. Number of chickens must be "reasonable." Enclosures must be 35' from all dwellings, 100' feet from schools and hospitals.	20,000 sq. ft. minimum lot size. 1 goat per 10,000 sq. ft. of lot area. Exceptions with use permit. Not expressly prohibited. Same as restrictions on chickens.	20,000 sq. ft. minimum lot size. 1 apiary per 10,000 sq. ft. of lot area. Must be 25 ft. from property line. Permit required from Health Department. Same as restrictions on chickens.
Richmond		
San Pablo		

**JEFFRY RANCH DECLARATION OF RESTRICTIONS
PERTAINING TO LIVESTOCK AND POULTRY
DATED OCTOBER 5, 1976
(EXCERPT)**

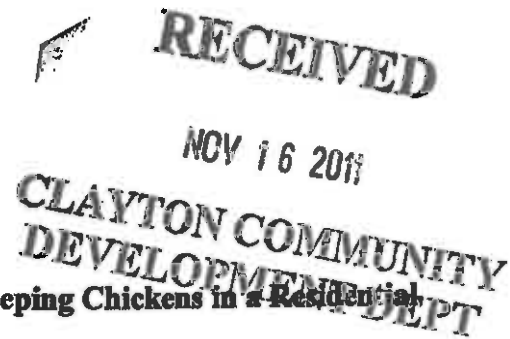
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- A-3. DWELLING COST, QUALITY AND SIZE: No dwelling shall be permitted on any lot at a cost of less than \$30,000. based upon cost levels prevailing on the date these covenants are recorded, it being the intention and purpose of the covenant to assure that all dwellings shall be of a quality of workmanship and materials substantially the same or better than that which can be produced on the date these covenants are recorded at the minimum cost stated herein for the minimum permitted dwelling size. The ground floor of the main structure, exclusive of one-story open porches and garages, shall be not less than 1,500 square feet for a one-story dwelling, nor less than 800 square feet on the ground floor of dwelling of more than one-story.
- A-4. BUILDING LOCATION: No building shall be located on any lot nearer to the front line or nearer to the side street line than the minimum building setback lines in accordance with City Ordinances. For the purpose of this covenant, eaves, steps and open porches shall not be considered as a part of a building, provided, however, that this shall not be construed to permit any portion of a building on one lot to encroach upon another lot.
- A-5. NUISANCES: No noxious or offensive trade or activity shall be carried on upon any lot covered by this declaration, nor shall anything be done thereon which may be or may become any annoyance or nuisance to the neighborhood.
- A-6. EASEMENTS: Easements for installation and maintenance of utilities are reserved as shown on the recorded plat.
- A-7. TEMPORARY STRUCTURES: No structure of a temporary character, trailer, basement, tent shack, garage, barn or other outbuilding shall be used on any lot at any time as a residence either temporarily or permanently.
- A-8. SIGNS: No sign of any kind shall be displayed to the public view on any lot except one professional sign of not more than one (1) square foot, one sign of not more than five (5) square feet advertising the property for sale or rent, except signs used by a builder to advertise the property during the construction and sales period.
- * A-9. LIVESTOCK AND POULTRY: No animals, livestock, or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats, or other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purposes.
- A-10. GARBAGE AND REFUSE DISPOSAL: No lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary, covered containers. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

November 16, 2011

Rita Howe – Code Enforcement Officer

Subject: Follow-up to Courtesy Notice Regarding the Keeping Chickens in a Residential Area



Dear Rita Howe:

Thanks to you and City staff for putting this issue before the Planning Commission! Since the Commission approved the recommendation to seek possible options to the amendment of the Clayton Municipal Code regarding chickens, I thought I would provide some more information to you regarding the conditions in which the chickens are kept.

Just prior to being formally notified about the complaints from surrounding neighbors, we actually had two chicken coops back to back. The second smaller coop, which was closer to the property line and more visible as it was an actual chicken coop, has since been removed. The first coop is actually a 10' by 5' dog run and is set back approximately 20 feet from the rear property line. This coop provides the chickens more room and a wider surface area, thus droppings are less concentrated. In addition, the coop is cleaned twice per day, once in the morning and once in the evening.

A possible source of odor was two compost bins at the left rear corner of our property. We are certain that such odor was from kitchen food waste, when combined with organic grass clippings, leaves, and chicken droppings along with opening the bins when it rains. To rectify this situation, several steps have been taken:

- Compost bins have since been removed
- If compost bins are set up again, they will be nowhere near the back property line, no more kitchen food products will be composted, only outdoor grass clippings & leaves, and the bin(s) will remain closed during rainy weather

On another note, we have reviewed the Jeffry Ranch CC&R's and are aware there is a clause stating that "Poultry shall not be kept on the property" How to address this is unclear to me; however, we realize that we have a special situation with our son Bretten having Tourette Syndrome and the benefit he receives from the chickens to offset the problems associated with this disorder. We would like to formally ask the City of Clayton to provide "reasonable accommodation" under The Americans with Disabilities Act (ADA) to allow our family to keep the chickens to provide comfort and therapy to our son given his disability.

We understand there may be some conditions related to addressing basic health and safety concerns associated with this accommodation and that this accommodation related directly to our son's condition.

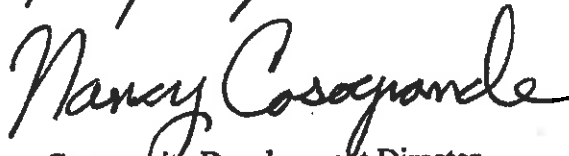
Thanks again for your understanding and support on this matter. Please feel free to call us at anytime at: 925-693-0073.

Regards,

Larry Casagrande



Nancy Casagrande



Cc: David Woltering - Community Development Director

Gary Napper - City Manager