

Minutes
City of Clayton Planning Commission
Regular Meeting
Tuesday, April 27, 2021

1. CALL TO ORDER

Chair A.J. Chippero called the meeting to order at 7:02 p.m.

2. ROLL CALL

Present: Chair A.J. Chippero
Vice Chair Terri Denslow
Commissioner Bassam Altwal
Commissioner Frank Gavidia
Commissioner Ed Miller

Absent: None

3. PLEDGE OF ALLEGIANCE

Commissioner Miller lead the Pledge of Allegiance.

4. PRESENTATIONS AND ANNOUNCEMENTS

City Manager Reina Schwartz indicated that the annual entitlement extensions for the Creekside Terrace project that have been brought before the Planning Commission in past years were not brought before the Planning Commission during the last cycle and, as a result, the entitlements have expired.

5. ACCEPTANCE OF THE AGENDA AND SELECTION OF PLANNING COMMISSIONER TO REPORT TO CITY COUNCIL

Commissioner Altwal moved and Commissioner Miller seconded a motion to move Item 10 before Item 6 on tonight's agenda. The motion passed 5-0.

Vice Chair Denslow to report at the City Council meeting of May 4, 2021.

10. PLANNING COMMISSION REQUESTS AND UPCOMING AGENDA DEVELOPMENT

This time is set aside for the Planning Commission to make requests of staff, and/or issues of concern to Planning Commissioners are briefly presented, prioritized, and set for future meeting dates.

Commissioner Altwal inquired:

- Who decides what items will be on the Planning Commission agenda?
- Who decides when items will appear on the Planning Commission agenda?

Interim Community Development Director Dana Ayers responded that the Planning Commission agenda is set by staff and the timing of the items brought forward typically depends on the capacity of staff to bring an item forward to the Planning Commission.

Commissioner Miller indicated that he attended the Planning Commission Academy hosted by the League of California Cities.

6. PUBLIC COMMENT

None.

7. CONSENT CALENDAR

A. Approval of Planning Commission Meeting Minutes.

Approval of the minutes for the February 23, 2021 Planning Commission meeting.

Commissioner Miller moved and Vice Chair Denslow seconded a motion to approve the February 23, 2021 Planning Commission meeting minutes, as amended. The motion passed 4-0-1 (Commissioner Gavidia abstained as he had recused himself from the meeting).

Approval of the minutes for the March 9, 2021 Planning Commission meeting.

Vice Chair Denslow moved and Commissioner Miller seconded a motion to approve the March 9, 2021 Planning Commission meeting minutes, as submitted. The motion passed 3-0-2 (Commissioner Altwal abstained as he did not attend the meeting; Commissioner Gavidia abstained as he had recused himself from the meeting).

8. PUBLIC HEARINGS

- A. Clayton Community Church – Requests for Environmental Review ENV-03-15, Use Permit UP-05-16, Site Plan Review Permit SPR-06-16, and Tree Removal Permit TRP-38-16.** Application by Clayton Community Church for approval of a Use Permit (UP-05-16), Site Plan Review Permit (SPR-06-16), and Tree Removal Permit (TRP-38-16) for a proposed new church located at 1027 Pine Hollow Court, Clayton (Assessor's Parcel No. 119-050-036). The subject property is approximately 4.4 acres and is currently developed with an approximately 1,300 square foot single-family residence (proposed to remain). The Use Permit application is required for a religious land use such as a church, synagogue, temple, or other place of worship, pursuant to Clayton Municipal Code §17.60.030(A)(3). The Site Plan Review Permit request involves consideration of the new building's architecture and associated site improvements including landscaping, parking, lighting, and fencing. The Tree Removal Permit request is for the proposed removal of 48 total trees on the property to accommodate construction of the building and other improvements and due to poor health and condition for some existing trees. A tree replacement plan is provided and includes 52 proposed new trees.

The Planning Commission is also asked to review the Initial Study and to consider whether to adopt the Mitigated Negative Declaration (MND) prepared for the proposed project (ENV-03-16), prior to considering whether to approve the requested permits.

Ms. Ayers provided an introduction to the presentation of the staff report.

Holly Pearson, Planning Consultant for the City, provided the staff report presentation.

Shawn Robinson, representing the applicant, Clayton Community Church, provided the following comments:

- The subject property was looked at by other prospective developers for the construction of high density housing. As a result, we feel we are developing the property for its best use.
- We are making our parking lot available to the Mount Diablo Elementary School for dropping off and picking up students.
- The proposed Church (“subject building”) is oriented toward the street in such a way as to minimize impacts to views of Mount Diablo.
- We designed the street-facing side of the subject building to look like the front porch of a single-family residence.
- The subject building has been located as far from the street as possible as allowed by the Contra Costa County Fire Protection District.
- There are no windows in the subject building in order to minimize sound impacts to surrounding neighborhoods.
- As part of the project, Pine Hollow Court will be widened.
- This project is supported by the Religious Land Use and Institutionalized Persons Act (RLUIPA).

The architect for the applicant, Amy Felix, provided a summarized overview of the project.

Commissioner Gavidia had the following questions and comments:

- Very well prepared project.
- It looks like the engineering on the hillside will address the slope movement on the on-site hillside.

Ms. Ayers indicated that, per the California Building Code, any new construction would be required to have a geotechnical report prepared for the project.

Ms. Felix indicated that an engineer was hired to prepare the geotechnical report and more engineers will be involved during the construction of the project to ensure slope stability of the site and structural integrity of the subject building.

Ms. Pearson provided the following comments:

- As part of the environmental review, a geotechnical report was prepared, with peer review of the geotechnical report performed by the City.
- The piers for the subject building are proposed at 24 inches wide and extended downward 36 inches below the lowest adjacent grade.
- The applicant will be following the recommendations of the engineer to provide slope stability and structural integrity.

Nick Pappani of Raney Planning and Management, Environmental Consultant for the City, provided the following comments:

- We prepared the CEQA document as part of the environmental review for this project.

- We hired a third-party engineering geologist firm to review the applicant's geotechnical report, and they made revisions and added requirements to the applicant's geotechnical report.
- Our geotechnical sub-consultant investigated "soil creep" on the project site.
- In addition to what Ms. Pearson outlined, our geotechnical sub-consultant required the balcony and deck to be anchored to the underlying bedrock below the creep zone.

Commissioner Gavidia asked whether the geotechnical requirements are implemented only as they observe conditions during project construction, or whether the requirements are in place permanently.

Mr. Pappani responded that the geotechnical requirements are in place permanently.

Commissioner Miller noted that the traffic study counts were conducted on October 11, 2020, which was a Sunday. He inquired whether that was done because that was the day of the week that it was anticipated the Church would be at its busiest.

Ms. Pearson indicated and Mr. Pappani confirmed that, yes, a Sunday was chosen to conduct the traffic study counts because that is the day the Church would have its peak operational activity.

Commissioner Miller inquired what the proposed width of Pine Hollow Court would be after it was widened as part of the project.

Ms. Felix responded that Pine Hollow Court would be widened to 34 feet.

Commissioner Miller asked if there would be any insulation to assist in sound attenuation so that off-site areas would not be impacted by sound generated from inside the subject building.

Ms. Felix responded that no, there would be no additional insulation included, as the currently-proposed construction would be comprised of drywall which, as stated in the project noise analysis report, would reduce sound levels to be compliant with the standards listed in the Clayton General Plan Noise Element.

Commissioner Miller asked how far the closest fire hydrant was located to the project site.

Ms. Felix responded that the applicant team had been working with the Contra Costa County Fire Protection District to add another fire hydrant which will increase the available water supply in the area as well as improve fire safety.

Vice Chair Denslow inquired why a mitigated negative declaration was chosen over an environmental impact report for the project's environmental analysis.

Mr. Pappani responded that an environmental impact report is typically prepared for a project that will cause significant unavoidable impacts. Since the recommended mitigation measures would reduce the project-related impacts to less-than-significant, a mitigated negative declaration is the appropriate environmental document to prepare for this project.

Vice Chair Denslow inquired where the 20 percent figure came from in the traffic study since the study was conducted during the pandemic when there was less traffic.

Mr. Pappani responded that the project's traffic study used pre-pandemic count comparisons to reasonably represent what real traffic conditions would be like.

Vice Chair Denslow inquired what the applicant meant by "traffic mitigation opportunities."

Ms. Felix responded that, through the shared parking agreement, there would be opportunities to park off-street, thereby minimizing impacts to on-street traffic and parking.

Vice Chair Denslow inquired about what other mitigations might be available to reduce traffic and parking impacts.

Ms. Felix responded that there are parking areas available off-site—for instance, in the Town Center—to and from which the Clayton Community Church could provide shuttle service to and from the subject building.

Commissioner Altwal provided the following comments:

- Commended staff on a well written and well presented staff report for the project.
- The nine Clayton Community Church staff members were not factored into the 160-parking space total.
- There are parking space calculations where the total number involved a fraction that should have been rounded up to a whole number.
- By my calculations, there should be 169 off-street parking spaces available.

Ms. Ayers responded that Clayton Municipal Code (CMC) Section 17.37.020.G indicates that when the computation of spaces results in a fractional number, a fraction of more than one-half or more shall be adjusted to the next higher whole number of spaces while a fraction of less than one-half shall be disregarded.

Commissioner Altwal indicated that, based on CMC Section 17.37.020.G, his revised calculations show that there should be 166 off-street parking spaces available.

Ms. Ayers indicated that the parking space requirements for schools that was used in Commissioner Altwal's calculation would be for compulsory education establishments. The project would not contain such education facilities but, instead, would have such amenities as Sunday school and other non-compulsory and intermittent religious education services.

Ms. Pearson indicated that, during the preparation of the proposal, there was discussion regarding what areas of the subject building would have certain uses conducted within each area. The classroom uses and office uses were ancillary to the main assembly uses proposed for the subject building so, as a result, the City used calculations for assembly uses to determine the off-street parking requirements for the project.

Mr. Robinson indicated that, for such events as Easter Sunday where more people would arrive to subject property, shuttles could be used to bring people to and from the subject building from other off-site parking areas.

Chair Chippero added that the report indicates that, when there is increased patronage during these religious holiday assemblies, there would be two different services, such that the anticipated attendance of 600 people would actually be split over two different times rather than all arriving and departing at once.

Commissioner Altwal inquired about the Wednesday calculations in the traffic study.

Mr. Pappani responded that, based on the Crosswalk Program, the traffic study took into consideration a conceptual situation where all students would be driven from Mount Diablo Elementary School to the subject building. However, this was expected to be the worst case scenario, as it was likely that some students would walk from the school to the subject building, thereby reducing the number of automobile trips and parking spaces needed.

Commissioner Altwal inquired what was the “significant effect on the environment” listed in the mitigation measures on Page 4 of the environmental document.

Mr. Pappani read the list of potential impacts in the mitigation measures and explained that, without mitigations, some of these actions could have a significant effect on the environment. However, because of the mitigations in place, these actions would be less-than-significant.

Commissioner Altwal inquired about the precedent mentioned by a previous lawsuit regarding whether the environment’s impacts upon a project should be analyzed alongside a project’s impacts upon the environment.

Mr. Pappani indicated that the analysis is always conducted from the perspective of a proposed project’s impacts upon the environment.

Commissioner Altwal inquired if the noise study took into consideration the sound levels generated by outdoor events held by the Clayton Community Church.

Mr. Pappani responded no and explained that the reason for that is because noise-generating outdoor events typically require the applicant to obtain a Temporary Use Permit and a Noise Permit which allow the City to have discretion over the outdoor events. As a result of this additional discretionary review, noise generated by outdoor events was not covered in the environmental document.

Ms. Felix and Mr. Robinson both explained that the outdoor events would be held in the Town Center near the Clayton Community Church offices on Main Street. The annual outdoor community events would still continue to take place in the Town Center.

Ms. Pearson added that the site plan does not have any large outdoor gathering spaces. This shows that there is no intent to hold outdoor events at the project site.

Commissioner Altwal continued with his comments and questions which included:

- Based on the architect comments, there is a loading dock, but I do not see it on the site plan.
- Confirming that the raised indoor stage as well as the entire site is compliant with Americans With Disabilities Act (ADA) requirements.
- One of the letters we received talks about a deal made many years ago which indicated that, if the project site was ever developed, an access point from High Street west of Oak Street would be provided.
- Can the construction time be conditioned to start later, at 8:00 a.m.?
- Will the Clayton Community Church be renting out facilities in the subject building?
- It should be noted, in the instance that if this project is not approved, that State-mandated housing regulations may require high density housing units to be constructed on the subject property.

Mr. Robinson explained that an access point to the project site from High Street was briefly considered but due to the constraints of the existing High Street bridge and the bridge needing to be widened as well as having a retaining wall installed, access from High Street was seen as cost prohibitive and so was never pursued as a viable access point to the project site.

Chair Chippero expressed concerns about conditioning the start time of construction to be later than the 7:00 a.m. construction start time allowed by the Clayton Municipal Code, as it places undue burden on the applicants.

Mr. Robinson indicated that the subject building would be available to rent as the intent is to enable the community to use the Clayton Community Church property, and Mount Diablo Elementary School has already contacted him about using the subject property for graduations.

The public hearing was opened.

The following comments were expressed in support of the project by Ron Musch, Darren Ellis, Sandy P. (last name indecipherable), Chris Theo, Michelle Ortiz, Jim L. (last name indecipherable), Gary Brannan, Mary Boone, Collette Carol, Chris Boone, Jamie and Katie Davis, Marcy (last name indecipherable), and Mick Wakefield:

- Read a Certificate of Recognition from a California State Assembly member who praised the Clayton Community Church's many outstanding public services provided.
- The Clayton Community Church serves our community in such a positive way and represents the best of who we are as citizens of Clayton.
- The project applicants are good, decent people who only want to reach out to our neighbors and improve our community.
- The Planning Commission would make the right decision by approving the project.
- The Clayton Community Church is generous and giving to our community.
- The congregation should have their own establishment and not have to meet in multi-use rooms and gymnasiums.
- Support decision to use a mitigated negative declaration.
- A walking path could be built for pedestrian travel from the intersection of Oak Street and Main Street going up the hill to the Clayton Community Church property.

- The Clayton Community Church holds wonderful community events in the Clayton Town Center, as well as working in Concord with Friends Feeding Families to provide food to those in need and with Monument Impact to help poor and working class families in the Monument Boulevard corridor.
- The trucks that travel back and forth to the Cemex Quarry on Mitchell Canyon Road make an incredible amount of noise starting at 7:00 a.m.
- Given the truck noise impacts on Mitchell Canyon Road, which is located only two blocks west of the project site and residential properties on Pine Hollow Court, it is ridiculous that the project opponents are bringing up noise as an issue.
- The Clayton Community Church will comply with all the conditions, mitigation measure, requirements, and regulations.
- We stand in support of the project and praise the Clayton Community Church for all they have done for the community.
- The Clayton Community Church is widening the street, adding more parking, and improving vehicular circulation and maneuverability.

The following comments were expressed in opposition to the project by Michael Mann, Elisa Dudley, Tara Mann, Scott (last name indecipherable), Janet (last name indecipherable), and Patricia (last name indecipherable):

- Concerned with the increased traffic that the project will cause.
- There should be a second access point to the project site from High Street.
- Concerned that the Clayton Community Church will not have enough funding for the project.
- An environment impact report should have been prepared for the project.
- There should have been better community outreach by the applicant.
- Concerned about the safety of pedestrians with the increased vehicle trips and traffic.
- The Clayton Community Church is being proposed in the wrong location.
- Some of the studies provided by consultants are questionable.
- The impacts of the increasing size of the Clayton Community Church congregation should be analyzed.
- Walked the project site and understand that, because of the necessary High Street bridge expansion and slope steepness on that side of the subject property, it would not be feasible to have an access point from High Street. However, still concerned about other uses on the site such as weddings and funerals.
- The parking agreement needs to be finalized.
- Construction commencement being delayed until 8:00 a.m. should be looked at.
- Shuttle service from parking areas in the Town Center would be a good idea.
- The City should open up the additional lane on Mount Zion Drive to assist in traffic flow.
- Traffic, construction times, noise, safety, and High Street access should all be analyzed thoroughly.

The public hearing was closed.

Commissioner Gavidia provided the following comments:

- He would like more information regarding RLUIPA and what constitutes an undue burden.

- He wants the public to hear the rationale behind RLUIPA and the legal impacts therein so that the public will be educated.
- Would be good to have the City Attorney present to answer.

Ms. Ayers responded that RLUIPA is a Federal law that prohibits local jurisdictions from treating churches differently from secular assembly establishment such as Elks Clubs or other assembly uses. From a land use perspective, religious assembly and non-religious assembly uses must be treated consistently.

City Manager Reina Schwartz explained that RLUIPA was established to protect assembly uses from being unfairly restricted because of what could be perceived to be a use that would negatively impact a community. The potential risk to the City is that the Planning Commission decision could be challenged in court.

Vice Chair Denslow inquired to Mr. Robinson what is the anticipated growth of his congregation and of on-site events such as weddings and funerals.

Mr. Robinson had the following responses:

- Regarding weddings and funerals, it is customary these days to not have these gatherings at church facilities so do not see this as an issue. Weddings and funerals are usually held at places such as Endeavor Hall.
- Regarding increases in the congregation, many more people are attending church online. Our attendance has been reduced because of the pandemic. We do not want a crowded facility because people do not want to attend a crowded church and we do not want to negatively impact the surrounding neighborhood.

Vice Chair Denslow inquired about the traffic study using data from other Citywide traffic studies that were conducted and wondered if that data could be made available to the Planning Commission as well as how the fire issue that Mr. Mann raised has been addressed.

Mr. Pappani responded that, yes, staff could coordinate with the traffic sub-consultants to get any additional information Commissioners would like to review. He also noted that the study took into consideration data from the Metropolitan Transportation Commission, which characterized traffic volumes at 80 percent of normal during the pandemic, so the information is consistent with the traffic information that has already been provided to the Planning Commission. He described the methodology of the field survey and how the fire did not impact the validity of the analysis even though there was a fire. The field survey analyzed the burrowing owls and ground squirrels and recommended adequate mitigations such that fire would not have any bearing on the protection of on-site species.

Commissioner Miller inquired about the determination that there would be no degradation of traffic-related level of service (LOS) with the addition of church traffic and whether traffic conditions remain within the LOS that has been and continues to be expected by the community.

Mr. Pappani responded that, because typical church peak traffic hours are on Sundays, weekday traffic periods are not analyzed. This is consistent with other church traffic analyses conducted in other communities.

Vice Chair Denslow inquired about the “deal” that Commissioner Altwal had mentioned earlier regarding High Street access to the project site.

Ms. Ayers responded that the City could research that information but the City does not have anything regarding a deal or other deal-related documentation at this time. She noted the likelihood that if the agreement had been between two private property owners, the City would not have been a party and would have no pertinent records, though a recorded agreement would show up on a title search of the property.

Commissioner Altwal inquired about the possibility of adding a second driveway access to continue the looping-style vehicular traffic flow that is already existing the Mount Diablo Elementary School parking lot, particularly, if the Clayton Community Church parking lot is going to be used to assist with Mount Diablo Elementary School traffic

Ms. Pearson responded that the Contra Costa County Fire Protection District reviewed the plans and did not require a second driveway access nor did the City of Clayton.

Mr. Robinson responded that there was discussion regarding adding a second driveway but the applicant(s) had concerns that this second driveway location would cause a negative impact to Mr. Mann’s residence by being located so close to his property. He added that the applicant(s) did not think it would be prudent to create such an impact. The Church’s proposed parking lot would allow for a looping-style vehicular traffic flow.

Ms. Felix concurred with Mr. Robinson’s comments and highlighted the fact that Pine Hollow Court being widened would also serve to assist with vehicular circulation and maneuverability.

Commissioner Altwal inquired about whether the Clayton Community Church could turn their educational facilities into a private school.

Mr. Robinson responded that there are no plans whatsoever with having a private school. He stated, and Ms. Ayers confirmed, that the addition of such a use would require Planning Commission review.

Commissioner Miller commented that the 36-foot wide driveway apron and aisle width would assist with vehicular circulation and maneuverability.

Chair Chippero provided the following comments:

- We have analyzed the project with the facts.
- We do not base our decision on emotions or opinion.
- We have taken this project very seriously and do not take this project review lightly.
- Went to the project site as part of our analysis.
- We want to do what is right for the City and deliberate in a legally consistent manner.
- I can appreciate the concerns of the residents who live on Pine Hollow Court as I used to live on a cul-de-sac near a temple that had an expanding attendance.

Commissioner Altwal provided the following comments:

- The project was presented very well.
- The project design was well-planned and the reports and analyses were very thorough.
- Cited case law where it was determined that traffic and noise cannot be used as reasons to deny a request for the construction of a new church.
- Extending the red curb in front of the residences on Pine Hollow Court would be a good idea.
- The parking space numbers should be increased slightly per my calculations.

Commissioner Miller provided the following comments:

- We render our decision based on law not emotion.
- But we also take into consideration the concerns of our citizens.
- My initial concerns about a queue of cars caught in gridlock dropping off and picking up students from Mount Diablo Elementary School has been alleviated because the Clayton Community Church site will provide for better traffic circulation and additional parking areas.

Chair Chippero commented that Mr. Pappani's explanation of why a mitigated negative declaration was prepared for the project instead of an environmental impact report was thorough and very informative and addressed the issue excellently. He thanked staff and the consultants for a very well-done presentation using accurate project information and diagrams.

Vice Chair Denslow commented that the project uses a clean design and, as Chair Chippero indicated, she really appreciated the explanation provided by Mr. Pappani regarding why a mitigated negative declaration was prepared instead of an environmental impact report. She added that the points raised by Commissioner Altwal regarding how State law could require higher density housing is definitely a consideration that should be weighed against the development of the project on the subject site and, given that this project is clean and legal, would be a better use of the subject property.

Commissioner Gavidia moved and Commissioner Altwal seconded a motion to adopt Planning Commission Resolution No. 02-2021 adopting the Clayton Community Church Initial Study/Mitigated Negative Declaration (IS/MND) and Mitigation Monitoring and Reporting Program (MMRP) (ENV-03-16). The motion passed 5-0.

Commissioner Gavidia moved and Commissioner Altwal seconded a motion to adopt Planning Commission Resolution No. 03-2021 approving the Use Permit Application (ENV-03-16), Site Plan Review Permit (SPR-06-16), and Tree Removal Permit (TRP-38-16) for construction of a new 13,998 square foot church. The motion passed 5-0.

9. ACTION ITEMS

None.

- 11. PLANNING COMMISSION REQUESTS AND UPCOMING AGENDA DEVELOPMENT**
Chair Chippero indicated that he fell in love with the community of Clayton when he moved and was amazed by the trails, development patterns, and quality of life. He indicated that was the reason he wanted to serve on the Planning Commission and he has enjoyed his tenure tremendously. However, he wants to spend more time with his family and has work obligations that he must tend to. As a result, he will be leaving the Planning Commission at the end of June 2021.

Commissioner Altwal praised staff for their quality of work and expressed appreciation for the thoroughness, attention to detail, and meticulousness that he has seen over the last couple of months. It reminds him why he enjoyed serving on the Planning Commission in the first place. He added that he is very thankful for Reina's, Dana's, and the City staff's high quality of work.

Ms. Ayers added that Ms. Pearson and Mr. Pappani are due to be praised for their hard work and assistance in preparing the project materials and information and she was very thankful for all they have done.

- 12. ADJOURNMENT**
The meeting was adjourned at 10:49 p.m. to the regularly-scheduled meeting of the Planning Commission on May 11, 2021.

Respectfully submitted:



Dana Ayers, AICP, Interim Secretary

Approved by the Clayton Planning Commission:



A.J. Chippero, Chair