



PLANNING COMMISSION

AGENDA Regular Meeting Tuesday, May 25, 2021 7:00 p.m.

***** New Location*****

This meeting is being held in accordance with the Brown Act as currently in effect under the State Emergency Services Act, the Governor's Emergency Declaration related to COVID-19 and the Governor's Executive Orders N-25-20 and N-29-20 that allow members of the Planning Commission, City staff, and the public to participate and conduct a meeting by teleconference, videoconference or both. To comply with public health orders, the requirement to provide a physical location for members of the public to participate in the meeting has been suspended.

Chair: A. J. Chippero
Vice Chair: Teri Denslow
Planning Commissioner: Bassam Altwal
Planning Commissioner: Frank Gavidia
Planning Commissioner: Ed Miller

A complete packet of information containing staff reports and exhibits related to each public item is available for public review on the City's website at www.ci.clayton.ca.us

Agendas are posted at: 1) City Hall, 6000 Heritage Trail; 2) Library, 6125 Clayton Road; 3) Ohm's Bulletin Board, 1028 Diablo Street, Clayton; and 4) City Website at www.ci.clayton.ca.us

Any writings or documents provided to a majority of the Planning Commission after distribution of the Agenda Packet and regarding any public item on this Agenda is available for review on the City's website at www.ci.clayton.ca.us

If you have a physical impairment that requires special accommodations to participate, please call the City Clerk's office at least 72 hours in advance of the meeting at (925) 673-7300. To protect our residents, officials, and staff, and aligned with the Governor's executive order to Shelter-at-Home, this meeting is being conducted utilizing teleconferencing means consistent with State order that that allows the public to address the local legislative body electronically.

Most Planning Commission decisions are appealable to the City Council within 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.

Instructions for Virtual Planning Commission Meeting Participation

To protect our residents, officials, and staff, and aligned with the Governor's executive order to Shelter-at-Home, this meeting is being conducted utilizing teleconferencing means consistent with State order that that allows the public to address the local legislative body electronically.

To follow or participate in the meeting:

Videoconference: To follow the meeting on-line, click this link: <https://us02web.zoom.us/j/85984238707>; or through the Zoom application, enter Webinar ID 859 8423 8707. No registration or meeting password is required.

Phone-in: Dial toll free (877) 853 5257. When prompted, enter the Webinar ID above.

E-mail Public Comments: If preferred, please e-mail public comments to the Interim Community Development Director at InterimCDD@ci.clayton.ca.us by 4:00 p.m. on the day of the Planning Commission meeting. All Email Public Comments will be forwarded to the entire Planning Commission.

Each person attending the meeting via video conferencing or telephone and who wishes to speak on an agendized or non-agendized matter shall have a set amount of time to speak as determined by the Planning Commission Chair.

1. **CALL TO ORDER**
2. **PLEDGE OF ALLEGIANCE**
3. **ROLL CALL**
4. **PRESENTATION AND ANNOUNCEMENTS**

None

5. **ACCEPTANCE OF THE AGENDA:** The Planning Commission will discuss the order of the agenda, may amend the order, add urgency items, note disclosures or intentions to abstain due to conflict of interest on agenda items or action items, and request Consent Calendar items be removed from the Consent Calendar for discussion. The Planning Commission may also remove items from the Consent Calendar prior to that portion of the Agenda.
6. **PUBLIC COMMENT (Non-Agenda Items):** This time has been set aside for members of the public to address the Planning Commission on items of general interest within the subject matter jurisdiction of the City. Although the Planning Commission values your comments, pursuant to the Brown Act, the Planning Commission generally cannot take any action on items not listed on the posted agenda. At the Chair's discretion, up to three minutes will be allotted to each speaker.
7. **CONSENT CALENDAR:** The following routine matters may be acted upon by one motion. Individual items may be removed by the Planning Commission for separate discussion at this time or under Acceptance of the Agenda. The ordinance title is deemed to be read in its entirety and further reading waived on any ordinance listed on the Consent Calendar.

A. MINUTES:

Planning Commission Meeting of April 27, 2021

Staff Recommendation: Approve the minutes of the April 27, 2021 meeting.

8. PUBLIC HEARINGS

A. The Olivia on Marsh Creek – Request for Extension of Approvals of a Density Bonus (DBA-01-19), Site Plan Review Permit (SPR-04-17) and Tree Removal Permit (TRP-24-17).

Request by William Jordan for a one-year extension to exercise the development approvals granted by the Clayton City Council on March 3, 2020, for The Olivia on Marsh Creek Project, an 81-unit senior rental housing development approved to be built on 3.02 acres located at 6170

High Street, 6450 Marsh Creek Road and 6490 Marsh Creek Road (Assessor's Parcel Nos. 119-021-063, 119-021-055 and 119-021-013).

Staff Recommendation: That the Planning Commission open the public hearing and accept testimony, close the public hearing and adopt the attached Resolution approving a one-year extension to March 3, 2023, of the development permit approvals for The Olivia on Marsh Creek Project.

9. ACTION ITEMS

None

10. COMMUNICATIONS: This time is set aside for the Planning Commission to make requests of staff, and/or for issues of concern to Planning Commissioners to be briefly presented, prioritized, and set for future meeting dates. This time is also provided for staff to share any informational announcements with the Commission.

11. ADJOURNMENT

The next Planning Commission Regular Meeting is Tuesday, June 8, 2021.

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 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

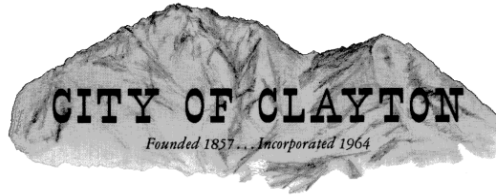
The meeting was adjourned at 10:49 p.m. to the regularly-scheduled meeting of the Planning Commission on May 11, 2021.

Respectfully submitted:

Dana Ayers, AICP, Interim Secretary

Approved by the Clayton Planning Commission:

A.J. Chippero, Chair



AGENDA REPORT

To: Honorable Chair and Planning Commissioners

From: Dana Ayers, AICP
Interim Community Development Director

Date: May 25, 2021

Subject: Agenda Item 8.A
The Olivia on Marsh Creek – Request for Extension of Approvals of a Density Bonus (DBA-01-19), Site Plan Review Permit (SPR-04-17) and Tree Removal Permit (TRP-24-17).

SUMMARY

This is a public hearing on a request by William Jordan for a one-year extension to exercise the development approvals granted by the Clayton City Council on March 3, 2020, for The Olivia on Marsh Creek Project, an 81-unit senior rental housing development approved to be built on 3.02 acres located at 6170 High Street, 6450 Marsh Creek Road and 6490 Marsh Creek Road (Assessor's Parcel Nos. 119-021-063, 119-021-055 and 119-021-013).

RECOMMENDATION

Staff recommends that the Planning Commission open the public hearing and accept testimony, close the public hearing and adopt the attached Resolution approving a one-year extension, to March 3, 2023, of the development permit approvals for The Olivia on Marsh Creek Project.

PROJECT INFORMATION

Applicant/Property Owner: William Jordan

Location: Total of 3.02 acres comprised of three lots:
6170 High Street (APN 119-021-055) (1.11 acres)
6450 Marsh Creek Road (APN 119-021-055) (0.97 acres)
6490 Marsh Creek Road (APN 119-021-013) (0.93 acres)
See Attachment F for Vicinity Map

General Plan Designation: Multifamily High Density (20 units per acre)
Town Center Commercial (for 6170 High Street only)

Town Center Specific
Plan Designation: Multi-Family High Density Residential
(15.1 to 2 units per acre)

Zoning Classification: PD (Planned Development) District

Environmental Review: Categorically exempt from the California Environmental Quality Act ("CEQA," Public Resources Code Section 21000 *et seq.*) pursuant to Categorical Class 32, Infill Development Projects, Section 15332 of the State Guidelines for Implementation of CEQA ("CEQA Guidelines," California Code of Regulations Section 15000 *et seq.*)

Public Notice: On May 14, 2021, the notice of the public hearing to consider the extension of approval of the Project was published in the Contra Costa Times; posted at the notice boards at Clayton City Hall, Clayton Community Library, and at the Ohm's posting board on Diablo Street at Main Street in the Town Center; and mailed to the owners of property within 300 feet of the Project site.

BACKGROUND

The Olivia at Marsh Creek (Project) is an approved multi-family residential development at the corner of High Street and Marsh Creek Road on three separate parcels: 6170 High Street, 6450 Marsh Creek Road, and 6490 Marsh Creek Road (see Attachment F: Vicinity Map). The proposed development would consist of 81 one- and two-bedroom rental units and would be rented to residents age 55 and older. The Project includes seven affordable units designated for Very Low-Income households as defined by the U.S. Department of Housing and Urban Development (HUD).

On November 12, 2019, the Planning Commission held a public hearing to consider the applicant's request for planning entitlements and an exemption from CEQA for the Project. After receiving testimony at that hearing, the Planning Commission continued the hearing to December 10, 2019, to allow for additional information gathering and public comment. At the December 10 meeting, the Planning Commission, by 3 to 1 vote, passed a motion to adopt a resolution determining that the Project qualifies for an exemption from CEQA pursuant to section 15332 (Class 32, Infill Development Projects) of the State CEQA Guidelines. On the same date, the Planning Commission voted 2 to 2 on a motion to adopt a resolution to approve the Affordable Housing Density Bonus application, Site Plan Review Permit, and Tree Removal Permit, resulting in a "no decision" action.

The applicant and three interested parties filed separate appeals of the Planning Commission's December 10, 2019, actions. On February 4, 2020, the City Council held

a public hearing to receive testimony on the four submitted appeals. The Council continued the public hearing to March 3, 2020, and directed staff to provide clarifications and additional information on several topics relevant to the Project. On March 3, 2020, after receiving additional testimony at the continued public hearing, the Council, by vote of 3 to 2, adopted two resolutions that: a) found the Project to be exempt from CEQA pursuant to Class 32 of the State CEQA Guidelines (ENV-01-17, Resolution No. 06-2020); and b) approved the development entitlements requested for the Project (Resolution No. 07-2020).

The development entitlements approved for the Project by the City Council include:

- An Affordable Housing Density Bonus (DBA-01-19) pursuant to the State's Density Bonus Law (California Government Code sections 65915 to 65918) and the City's Affordable Housing Density Bonus Requirements Ordinance (Chapter 17.90 of the Clayton Municipal Code). The approved Affordable Housing Density Bonus allows a greater number of residential units than is normally permitted on the site under the General Plan land use designation and zoning (81 units proposed, as compared to 60 normally permitted) in exchange for the provision of the seven affordable units, in accordance with State and local Density Bonus law provisions;
- Site Plan Review Permit approval (SPR-04-17) of the architecture, landscaping, parking, lighting and fencing for the construction of three multi-unit residential buildings on three separate parcels, each consisting of between 25 and 30 units (SPR-04-17); and
- Tree Removal Permit approval (TRP-24-17) allowing the removal of 106 trees from the three parcels to accommodate construction of the buildings and other improvements, with a tree replacement plan provided.

A legal challenge of the City Council's approval of the Project was filed by Clayton for Responsible Development, a group of interested residents who opposed the Project. The Court ultimately upheld the City's approval in October 2020.

EXTENSION REQUEST

Section 17.64.030 of Clayton Municipal Code allows permittees and development applicants to request extensions of the approvals of development entitlements:

Upon showing of good cause therefore, the Planning Commission may extend the period of a permit in which it is to be exercised, used or established, for a maximum of twelve (12) months at a time or as otherwise specified on the permit.

In adopting Resolution No. 07-2020 approving land use entitlements for the Project, the City Council adopted the following, Project-specific condition no. 16 with respect to granting of extensions of permit approvals:

This approval expires two years from the date of approval (expires March 3, 2022), unless a building permit has been issued and construction has diligently commenced thereon and has not expired, or an extension has been approved by the Planning Commission. Requests for extensions must be received in writing

with the appropriate fees prior to the expiration of this approval. No more than one, one-year extension shall be granted.

On March 19, 2021, in accordance with the provisions of Condition No. 16 of City Council Resolution No. 07-2020, William Jordan filed a timely request for a one-year extension of the development entitlements granted for the Project, inclusive of the Affordable Housing Density Bonus, Site Plan Review Permit and Tree Removal Permit (DBA-01-19, SPR-04-17 and TRP-24-17). The Applicant requested the extension due to the months of litigation between the City Council's action (March 2020) and the end of the appeal period following the Court's decision (January 2021), during which time progress toward construction of the Project was suspended.

Under Section 17.64.080 of the Clayton Municipal Code, the Planning Commission shall make its findings and render its decision on the extension in writing and "Its decision may order additional terms, limitations or conditions, a specified probationary period for correction or implementation of new requirements, a future review at a time specified, or a combination of these, or revocation."

ANALYSIS

Staff believes the Applicant has shown good cause and recommends approval of the Applicant's request for extension of the development entitlements for The Olivia on Marsh Creek.

Construction of The Olivia on Marsh Creek Project would add to the City's stock of senior and affordable housing, thereby facilitating age and income diversity in the City's population. The one-year extension requested by the Applicant would restore the initial roughly two-year term of approval granted by the conditions of approval, with permit expiration extended from March 3, 2022, to March 3, 2023. The extension would adjust for time spent in litigation of the Project, when preparation of construction drawings for Project building permits would otherwise have occurred.

The Applicant requests no amendments that would trigger new discretionary review or revision of the land use entitlements previously granted by the City. With the one-year extension, all conditions of approval adopted by the City Council with Resolution No. 07-2020 would continue to be applicable to the Project. Should the Commission approve the extension with additional conditions, any such condition should be reasonably required and limited to address a change that has occurred since the approval of the Project.

ENVIRONMENTAL

Section 15378 of the State CEQA Guidelines defines a "project" as "the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment." The CEQA Guidelines further define a "project" as "the activity which is being approved and which may be subject to several discretionary approvals by governmental agencies. The term 'project' does not mean each separate governmental approval."

Prior to approving The Olivia on Marsh Creek Project on March 3, 2020, the City Council adopted Resolution No. 06-2020 determining the Project to be exempt from CEQA pursuant to section 15332, (Class 32, Infill Development) of the State CEQA Guidelines. With the Council's determination of that The Olivia on Marsh Creek Project is exempt from CEQA, no additional findings are necessary for CEQA compliance for the current request for extension of entitlements of the approved Project.

The impacts of approving the extension of time—separate and apart from any development—would be limited to the impacts of signing a piece of paper. Signing a piece of paper, if separated from the underlying development it allows, cannot qualify as a project subject to CEQA because it would not result in either a direct or reasonably foreseeable indirect physical change in the environment. (State CEQA Guidelines, §§ 15060, subd. (c)(1)-(3), 15378, subd. (a).)

PUBLIC COMMENTS

As of the writing of this agenda report, City staff has received seven written comments on the extension request. Those comments are attached to this agenda report as Attachment D.

ATTACHMENTS

- A. Proposed Resolution
- B. Applicant's Extension Request
- C. City Council Adopted Resolution No. 07-2020
- D. Public Comments
- E. Approved Project Plans (online at <https://ci.clayton.ca.us/community-development/planning/development-activity/clayton-senior-housing-project/>)
- F. Vicinity Map

Attachment A

Proposed Resolution

The Olivia on Marsh Creek
Request for Extension of Approvals
Planning Commission Hearing, May 25, 2021

CITY OF CLAYTON
PLANNING COMMISSION
PROPOSED
RESOLUTION NO. 04-2021

A RESOLUTION OF THE CLAYTON PLANNING COMMISSION APPROVING A ONE-YEAR EXTENSION OF THE APPROVALS OF AN AFFORDABLE HOUSING DENSITY BONUS (DBA-01-19), SITE PLAN REVIEW PERMIT (SPR-04-17) AND TREE REMOVAL PERMIT (TRP-24-17) FOR THE OLIVIA ON MARSH CREEK HOUSING PROJECT

WHEREAS, on February 4 and March 3, 2020, the Clayton City Council held a public hearing on appeals of the Clayton Planning Commission's actions taken on December 10, 2019, with respect to The Olivia on Marsh Creek Project (Project), an 81-unit senior rental housing development approved to be built on 3.02 acres located at 6170 High Street, 6450 Marsh Creek Road and 6490 Marsh Creek Road (Assessor's Parcel Nos. 119-021-063, 119-021-055 and 119-021-013); and

WHEREAS, on March 3, 2020, after closing the public hearing, the Council, by vote of 3 to 2, adopted Resolution No. 07-2020 approving development entitlements for the Project that included: a) an Affordable Housing Density Bonus (DBA-01-19) pursuant to the State's Density Bonus Law (California Government Code sections 65915 to 65918) and the City's Affordable Housing Density Bonus Requirements Ordinance (Chapter 17.90 of the Clayton Municipal Code); b) Site Plan Review Permit approval (SPR-04-17) of the architecture, landscaping, parking, lighting and fencing for the construction of three multi-unit residential buildings; and c) and Tree Removal Permit approval (TRP-24-17) allowing the removal of 106 trees from the three parcels to accommodate construction of the Project; and

WHEREAS, prior to approving the Project on March 3, 2020, the City Council adopted Resolution No. 06-2020 determining the Project to be exempt from the California Environmental Quality Act ("CEQA," Public Resources Code Section 21000 *et seq.*) pursuant to Categorical Class 32, Infill Development Projects, Section 15332 of the State Guidelines for Implementation of CEQA ("CEQA Guidelines," California Code of Regulations Section 15000 *et seq.*); and

WHEREAS, Condition No. 16 of Resolution No. 07-2020 set the expiration date for the approvals of DBA-01-19, SPR-04-17 and TRP-24-17 on March 3, 2022, two years after the Council's approval of the Project entitlements; and

WHEREAS, in accordance with Section 17.64.030 of the Clayton Municipal Code and Condition No. 16 of Resolution No. 07-2020, upon timely request from the applicant and the applicant's showing of good cause, the Planning Commission may grant a one-time, one-year extension of the development approvals granted to the Project by the City Council; and

WHEREAS, on March 19, 2021, in accordance with the provisions of Condition No. 16 of City Council Resolution No. 07-2020, William Jordan, Applicant for the Project, filed a timely request for a one-year extension of the development entitlements granted for the Project, inclusive of the Affordable Housing Density Bonus, Site Plan Review Permit and Tree Removal Permit (DBA-01-19, SPR-04-17 and TRP-24-17); and

WHEREAS, on May 14, 2021, notice of the public hearing to consider the request for extension of approval of the Project was published in the Contra Costa Times; posted at the notice boards at Clayton City Hall, Clayton Community Library, and at the Ohm's posting board on Diablo Street at Main Street in the Town Center; and mailed to the owners of property within 300 feet of the Project site; and

WHEREAS, on May 25, 2021, the Clayton Planning Commission held a duly-noticed public hearing on the request for extensions of the Affordable Housing Density Bonus (DBA-01-19), Site Plan Review Permit approval (SPR-04-17), and Tree Removal Permit approval (TRP-24-17) for The Olivia on Marsh Creek Project, and received and considered testimony and evidence, both oral and documentary.

NOW, THEREFORE, BE IT RESOLVED, the Planning Commission does determine the foregoing recitals are true and correct and makes the following findings:

- A. The Applicant has shown good cause for extension of the development entitlements for The Olivia on Marsh Creek. Construction of The Olivia on Marsh Creek Project will add to the City's stock of senior and affordable housing, thereby facilitating age and income diversity in the City's population. The one-year extension requested by the Applicant will restore the initial roughly two-year term of approval granted by the conditions of approval, with permit expiration extended from March 3, 2022, to March 3, 2023. The extension will adjust for time spent in litigation of the Project until January 2021, during which preparation of construction drawings for Project building permits could otherwise have occurred.
- B. Nothing in the Applicant's request for extension of current entitlements for the Project triggers new discretionary review or revision of the land use entitlements previously granted by the City. With the one-year extension, all conditions of approval adopted by the City Council with Resolution No. 07-2020 will continue to be applicable to the Project.
- C. Prior to approving The Olivia on Marsh Creek Project on March 3, 2020, the City Council adopted Resolution No. 06-2020 determining the Project to be exempt from CEQA pursuant to section 15332, (Class 32, Infill Development) of the State CEQA Guidelines. With the Council's determination of that The Olivia on Marsh Creek Project is exempt from CEQA, and pursuant to Section 15378 of the State CEQA Guidelines, no additional findings are necessary for CEQA compliance for the current request for extension of entitlements of the approved Project. The

impacts of approving the extension of time—separate and apart from any development—would be limited to the impacts of signing a piece of paper. Signing a piece of paper, if separated from the underlying development it allows, cannot qualify as a project subject to CEQA because it would not result in either a direct or reasonably foreseeable indirect physical change in the environment. (State CEQA Guidelines, §§ 15060, subd. (c)(1)-(3), 15378, subd. (a).)

NOW THEREFORE BE IT FURTHER RESOLVED, the Planning Commission hereby approves the request for a one-year extension, to March 3, 2023, of the term of the approvals of the Affordable Housing Density Bonus (DBA-01-19), Site Plan Review Permit approval (SPR-04-17), and Tree Removal Permit approval (TRP-24-17) for The Olivia on Marsh Creek Project. The Planning Commission hereby directs and authorizes staff to prepare, execute, and file with the Contra Costa County Clerk a notice of exemption within five working days of the approval of this Resolution. The record of proceedings for this matter is located at the City of Clayton, City Hall, 6000 Heritage Trail, Clayton, CA 94517. The custodian of records is the City Clerk.

PASSED AND ADOPTED by the Planning Commission of the City of Clayton at a regular meeting on the day of , 2021.

AYES:

NOES:

ABSTAINED:

ABSENT:

APPROVED:

ATTEST:

A.J. Chippero
Chair

Dana Ayers
Interim Community Development
Director

Attachment B

Applicant's Extension Request

The Olivia on Marsh Creek
Request for Extension of Approvals
Planning Commission Hearing, May 25, 2021

3/19/21

To: Reina Schwartz

From: William Jordan

Re: Extension of Entitlements for The Olivia on Marsh Creek

In March of 2020, my project called The Olivia on Marsh Creek was approved by city council. The approvals were on ENV-01-17, DBA-01-19, SPR-04-17, and TRP-24-17 applications. And the Resolutions were No. 06-2020, and No. 07-2020.

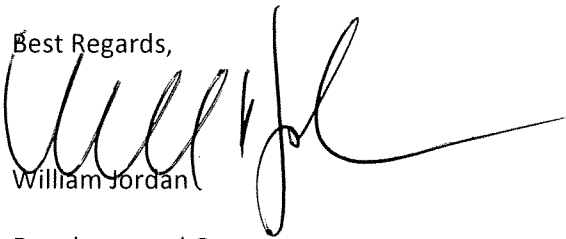
The Olivia on Marsh was also challenged after the approvals by a group called Clayton for Responsible Development. I went through the litigation process with the City of Clayton for a ruling in favor of City of Clayton and myself, William Jordan at end of October 2020.

Because of the litigation, I was effectively put on hold until January 2021 after the appeal period expired to move forward on the construction documents.

The project approvals in March 2020 were for two years. Because of the the litigation, I'd like to get in writing the city's position on whether I need to go back to planning commission for the extension of one year or can it be done ministerially over the counter by right.

I look forward working with the City of Clayton as we move forward.

Best Regards,

A handwritten signature in black ink, appearing to read 'William Jordan', with a long horizontal flourish extending to the right.

William Jordan

Developer and Owner

925-872-7249



6000 Heritage Trail, Clayton, CA 94517
 Phone No. 925.673.7300 Fax No. 925.672.4917
 www.ci.clayton.ca.us

Community Development General Application Form

Below: Office Use Only

File No: _____ Fee(s) Deposit(s): _____
 Received By: _____
 Date: _____ Receipt No: _____

Please clarify any questions with the Planning Staff prior to completing this form. Please print or type legibly. Attach additional sheets if necessary. Incomplete applications will not be accepted.

1. Type of Application(s) Requested:

- | | | |
|---|--|---|
| <input type="checkbox"/> Annexation | <input type="checkbox"/> Lot-Line Adjustment/Merger | <input type="checkbox"/> Tentative Map |
| <input type="checkbox"/> Appeal - Administrative | <input type="checkbox"/> Prezoning/Rezoning | <input type="checkbox"/> Tentative Parcel Map |
| <input type="checkbox"/> Appeal - Planning Commission | <input type="checkbox"/> Second Dwelling Unit Permit | <input type="checkbox"/> Use Permit |
| <input type="checkbox"/> Development Plan | <input type="checkbox"/> Site Plan Review Permit | <input type="checkbox"/> Use Permit- Fences |
| <input type="checkbox"/> General Plan Amendment | <input type="checkbox"/> Specific Plan Amendment | <input type="checkbox"/> Variance |
| <input type="checkbox"/> Large Family Day Care Permit | <input type="checkbox"/> Temporary Use Permit | <input checked="" type="checkbox"/> Other: <u>Extension of Entitlements</u> |

2. Property/Site Information: 119021063, 119021055, 119021063

Assessors Parcel Number(s): _____
 Address: 6170 High St. 6450 & 6490 Marsh Creek Rd
 Zoning Classification: PD General Plan Designation: MHD
 Total Square Feet: 131551 Total Acres: 3.02

3. Requested Action: Mark if response is attached.

Entitlement Extension for The Olivia on Marsh Creek

4. Property Owner:

In signing this application, I, as property owner, have full legal capacity to, and hereby do authorize the filing of this application. I understand that any conditions of approval for this application are binding. I agree to be bound by those conditions, subject only to the right to object at the hearings or during the appeal period.

Signature: [Signature]
 Name: William Jordan
 Company: _____
 Address: 6690 Marsh Creek Rd
Clayton CA 94517
 Home Phone No: 925 872 7249
 Cell Phone No: _____
 Work Phone No: _____
 Fax No: _____
 Email: billjordan@sbcglobal.net

5. Applicant/Agent:

In signing this application, I, as applicant/agent have obtained authorization of the property owner to file this application. I understand that any conditions of approval for this application are binding. I agree to be bound to conditions of approval, subject only to the right to object at the hearings or during the appeal period. If this application has not been signed by the property owner, I have attached a separate documentation of full legal capacity to file this application and agreement to conditions of approval subject to the right to object at the hearings or during the appeal period.

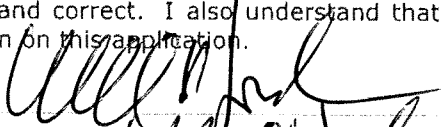
Signature: [Signature]
 Name: William Jordan
 Company: _____
 Address: 6690 Marsh Creek Rd
Clayton CA 94517
 Home Phone No: 925 872 7249
 Cell Phone No: _____
 Work Phone No: _____
 Fax No: _____
 Email: billjordan@sbcglobal.net

6.Certification:

As the Property Owner and/or Applicant/Agent in the request made by this filing, I hereby certify that I acknowledge, understand and concur with the following statements:

- This application might be subject to the California Environmental Quality Act (CEQA) of 1970. The City of Clayton (City) in granting this application may attach any condition(s) necessary to ensure that the proposal will not be injurious or detrimental to the welfare of persons residing or working in the neighborhood or city.
- Property Owner and/or Applicant/Agent agree to hold the City of Clayton (City) harmless for all costs and expenses, including attorney's fees, incurred by the City or held to be the liability of the City in connection with the City's defense of its actions in any proceeding brought in any state or federal court challenging the City's actions with respect to the applicant's project.
- There are no assurances at any time, implicitly or otherwise, regarding final staff recommendations to the decision making regarding this application.
- Changes to the proposed project may require a new application and payment of new fees.
- That to the best of my knowledge the information I have presented in this form and the accompanying materials is true and correct. I also understand that additional data and information may be required prior to final action on this application.

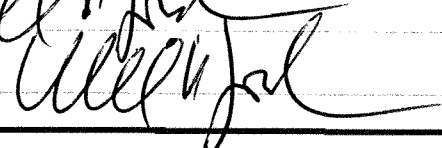
Applicant's Signature: _____



Date: _____

3/19/21

Property Owner's Signature: _____



Date: _____

3/19/21

Attachment C

City Council Resolution No. 07-2020

The Olivia on Marsh Creek
Request for Extension of Approvals
Planning Commission Hearing, May 25, 2021

RESOLUTION NO. 07-2020

A RESOLUTION GRANTING THE APPEAL AND APPROVING THE AFFORDABLE HOUSING DENSITY BONUS APPLICATION (DBA-01-19), SITE PLAN REVIEW (SPR-04-17), AND TREE REMOVAL PERMIT (TRP-24-17) FOR THE OLIVIA ON MARSH CREEK SENIOR HOUSING PROJECT

**THE CITY COUNCIL
City of Clayton, California**

WHEREAS, the City received an application from William Jordan requesting review and consideration of an Affordable Housing Density Bonus Application (DBA-01-19), Site Plan Review Permit (SPR-04-17), and Tree Removal Permit (TRP-24-17), and related Environmental Review (ENV-01-17) for development of an 81-unit senior residential project located on three adjacent parcels with a total area of 3.02 acres ("Project"), known as The Olivia on Marsh Creek, located at the southwest intersection of High Street and Marsh Creek Road (Assessor's Parcel Nos. [APNs] 119- 021-063, 119-021-055, and 119-021-013); and

WHEREAS, the City commissioned an independent analysis of the Project's eligibility for an Infill Exemption by Raney Planning & Management, Inc., entitled "Infill Exemption Environmental Analysis for Clayton Senior Housing Project," and dated June 14, 2019, which analyzes whether the Project meets all criteria of the Class 32 Infill Exemption as stated in California Environmental Quality Act (CEQA) Guidelines Section 15332; and

WHEREAS, on November 12 and December 10, 2019, the Clayton Planning Commission held duly-noticed public hearings on the Project and received and considered testimony and evidence, both oral and documentary, and

WHEREAS, on December 10, 2019, the Planning Commission, by 3-1 vote, approved a motion to adopt proposed Resolution No. 05-19 determining that the Project is Categorically Exempt from environmental review under Class 32 (Infill Development Projects) of the CEQA Guidelines; and

WHEREAS, on December 10, 2019, the Planning Commission voted 2-2 on a motion to adopt proposed Resolution No. 06-19 approving with conditions the planning entitlements for the project, including an Affordable Housing Density Bonus Application, Site Plan Review Permit, and Tree Removal Permit, resulting in an action of "No Decision";

WHEREAS, on December 30, 2019, Kent Ipsen, the owner of a property adjacent to the subject site, filed an appeal of the Planning Commission approval of the CEQA Categorical Exemption (Class 32, Infill Development Projects) for the proposed project; and

WHEREAS, on January 2, 2020, Dan Hummer, the owner of a property in the vicinity of the subject site, filed an appeal of the Planning Commission approval of the CEQA Categorical Exemption (Class 32, Infill Development Projects) for the proposed project; and

WHEREAS, on January 2, 2020, Irina and Alexander Liskovich, the owners of a property in the vicinity of the subject site, filed an appeal of the Planning Commission approval of the CEQA Categorical Exemption (Class 32, Infill Development Projects) for the proposed project; and

WHEREAS, on January 2, 2020, William Jordan, the Project applicant, filed an appeal of the “No Decision” action on the planning entitlements by the Planning Commission; and

WHEREAS, on February 4 and March 3, 2020, the City Council held duly noticed public hearings, accepting testimony from the appellant, the applicant and the public, and discussed the appeals and staff’s recommended determination of a Class 32 Categorical Exemption (Infill Development Projects) pursuant to the CEQA Guidelines and the recommended conditional approval of the planning entitlements for the project; and

WHEREAS, proper notice of this public hearing was given in all respects as required by law; and

WHEREAS, on March 3, 2020, the City Council adopted Resolution No. 06-2020 determining that the project is Categorically Exempt from environmental review pursuant to CEOA, under Class 32 (Infill Development Projects) of the CEOA Guidelines.

NOW THEREFORE, BE IT RESOLVED, the City Council of Clayton does determine the foregoing recitals are true and correct and makes the following findings for approval of the Project:

Clayton Municipal Code (CMC) Section 17.90.090 and State Density Bonus law state that the City shall grant the concessions or incentives requested by a project applicant unless the City makes a written finding, based upon substantial evidence, of either of the following:

- A. The concession or incentive is not required in order to provide for Affordable Housing Costs;*
- B. The concession or incentive would have a specific adverse impact upon public health and safety or the physical environment or on any real property that is listed in the Federal Register of Historical Resources or any locally officially designated architecturally and historically significant buildings and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to Low and Moderate Income households.*

The applicant has submitted documentation demonstrating that the two requested concessions are required in order to make the development project economically feasible with inclusion of the affordable units. According to the independent analysis prepared on the applicant's behalf, and subject to a peer review by the City's independent consultant, for the cost savings of the concessions: (1) a reduction in setback requirements for buildings and parking spaces; and (2) a reduction in the required number of parking spaces; the total cost savings makes it possible to offer seven units at reduced rents to Very Low Income households.

The City further finds that the requested concessions would not have an adverse impact on public health or safety, the physical environment, or historic resources as defined in Government Code section 65589.5(d)(2). There are no environmentally sensitive areas or historic resources on or adjacent to the project site. With more than one parking space provided per dwelling unit, the project will avoid potential negative impacts related to parking.

NOW THEREFORE BE IT FURTHER RESOLVED, the City Council hereby makes the following required findings for approval of a Site Plan Review Permit:

1. That the project is consistent with the General Plan and Town Center Specific Plan designations and policies.

The General Plan designation of the project site is Multifamily High Density (MHD) (20 units per acre), and the Specific Plan designation is Multi-Family High Density Residential (15.1-20 units per acre). These designations are intended to facilitate development of apartments or condominiums, and include affordable housing, two stories or higher in areas of Clayton where higher densities are appropriate, such as near the commercial center. The proposed development is partially within and immediately adjacent to the commercial Town Center of Clayton. The proposed design is complementary to the western design theme of the Town Center Specific Plan. The land use designation allows for maximum structural coverage of 65 percent of the site area. The proposed project is well below this maximum, with lot coverages of 24.1 percent for 6170 High Street, 24.5 percent for 6450 Marsh Creek Road, and 26.1 percent for 6490 Marsh Creek Road.

The policies for the MHD land use designation encourage new development to use "Planned Development concepts and standards, with incorporation of significant design and amenity in the project." The project site is subject to the Planned Development District zoning regulations and corresponding development standards. The project is well designed, with quality building materials, articulated facades, ample open space, diverse and attractive landscaping, and other amenities including outdoor furnishings, bicycle racks and an assigned parking space for each unit.

Due to the project incorporating a density bonus, pursuant to State law and the City's Affordable Housing Density Bonus Requirements Ordinance, it exceeds the 20 unit per acre residential density for the MHD land use designation. Proposed residential density for the project with the bonus units is 26.8 units per acre. However, the state Density Bonus Law allows a development project to exceed the maximum density allowed under the General Plan when affordable housing units are included, and the granting of the density bonus shall not require, or be interpreted, in and of itself, to require a general plan amendment. Furthermore, the Density Bonus Law requires the City to approve the project with the additional density, provided that it meets all requirements of the law and does not result in specific adverse impacts as defined in Government Code section 65589.5(d)(2). Thus, in this case, the project is allowed and is consistent with State law and the City's general plan and local regulations (CMC Chapter 17.90) at the proposed density of 26.8 units per acre.

2. *Meets the standards and requirements of the Zoning Ordinance.*

The project meets the requirements of CMC Chapter 17.90, the Affordable Housing Density Bonus Requirements. Eleven percent of the number of 60 residential units allowed under the General Plan are set aside for households meeting the U.S. Department of Housing and Urban Development's (HUD's) definition of Very Low Income. Therefore, the project is entitled to a 35 percent density bonus, equivalent to 21 additional units. The type and size of affordable units reflects the range and sizes of units in the project as a whole (five one- bedroom units and two two-bedroom units are designated as below market rate [BMR]). The units are dispersed throughout the three buildings and are identical in design and construction quality to the market-rate units.

The applicant has submitted all required materials for the Affordable Housing Unit Plan that are listed in CMC Section 17.90.140. A requirement for an Affordable Housing Unit Agreement pursuant to CMC Section 17.90.150 has been included as a Condition of Approval for the project.

In addition, the project complies with the zoning standards of the Planned Development District in CMC Chapter 17.28. As prescribed in CMC Section 17.28.050.B, the applicable development standards are the Multiple Family Residential High Density (M-R-H) District standards in Chapter 17.20. With the exception of minor variations in required setbacks and building height and the reduced parking requirements that are permitted through the granting of concessions and waivers/reductions pursuant to the Density Bonus Law, which shall not require, or be interpreted, in and of itself, to require a zoning change, the project meets the development standards for the M-R-H District.

3. *Preserves the general safety of the community regarding seismic, landslide, flooding, fire, and traffic hazards.*

The project is located on a mostly level site that is not impacted by landslide hazard and is not located in an area at risk of flooding. The project will comply with local and State building codes for seismic safety and fire prevention.

4. *Maintains solar rights of adjacent properties.*

The project is located on a relatively flat site and maintains adequate building setbacks from property lines, thereby avoiding shadow impacts and protecting solar access for adjacent properties.

5. *Reasonably maintains the privacy of adjacent property owners and/or occupants.*

Mature existing trees along the western property line of the subject parcels and along the southern property line of 6490 Marsh Creek Road will be maintained, helping to ensure privacy for adjacent properties to the west and south. In addition, new Oak and Bay trees will be planted along the western property line of 6170 High Street to provide additional

screening. Along the "flagpole" section of 6470 Marsh Creek Road that is located between the two subject parcels at 6450 and 6490 Marsh Creek Road, six-foot high solid wood fencing is proposed to ensure privacy for the former parcel.

6. *Reasonably maintains the existing views of adjacent property owners and/or occupants.*

The project is located on a relatively flat site and is downhill from the adjacent property to the west. Because of the significant difference in elevation between the subject site (approximate elevation of 400 feet above sea level) and the properties to the west, 6470 Marsh Creek Road and 6061 Clayton View Lane (approximate elevation of 450 feet above sea level), the proposed buildings will not obstruct views from these neighboring properties to the west. No other properties adjacent to the project site have significant views.

7. *Is complementary, although not identical, with adjacent existing structures in terms of design, materials, colors, size, and bulk.*

The applicant has requested a waiver of this standard pursuant to the Density Bonus Law. The size and bulk of the proposed buildings (three stories in height) exceed that of many of the existing structures in the surrounding area. However, the topography in the vicinity of the project site, specifically the hill immediately to the west, has the effect of lessening the visual impact of the taller buildings. In addition, variations in exterior wall planes and design articulation of the facades help to create a less bulky appearance.

Building materials such as smooth hardiplank siding, brick and composition shingle roofing, as well as stone retaining walls, are similar and complementary to the design and rustic character of nearby structures. Proposed exterior colors for the buildings are primarily neutral and natural earth-tones, such as beiges, browns, grays, and brownish shades of red, which are complementary with the character of the surrounding area.

8. *Is in accordance with the design standards for manufactured homes per Section 17.36.078. of the CMC.*

The project does not include manufactured homes.

9. *Proposed tree removal with proposed tree replacement will not adversely impact the health, safety, and general welfare of the residents, while balancing the right of an individual to develop private property per Section 15.70.010 of the CMC.*

The applicant is proposing and the City is requiring replacement trees both on-site and off-site with this proposed project.

NOW THEREFORE BE IT FURTHER RESOLVED, the City Council does hereby approve the Affordable Housing Density Bonus Application (DBA-01-19), Site Plan Review Permit (SPR-04-17), and Tree Removal Permit (TRP-24-17) for The Olivia on Marsh Creek Road, an 81-unit senior residential development located on three adjacent parcels with a total area of 3.02

acres, located at the southwest intersection of High Street and Marsh Creek Road (APNs 119-021-063, 119-021-055, and 119-021-013), subject to the following conditions:

PLANNING CONDITIONS

1. An Affordable Housing Unit Agreement (AUA) shall be recorded as a restriction on each parcel on which the Affordable Housing units will be constructed in a form acceptable to the City Attorney. The approval and recordation of the AUA shall take place prior to issuance of building permits. The AUA shall be binding on all future owners and successors interest. The AUA shall include, at minimum, but shall not be limited to the following:
 - a. A description of the development, including the total number of units, the number of Affordable Housing Units, and the tenure of the Affordable Housing Units;
 - b. The size, in square footage, and location of Affordable Housing Units;
 - c. A description of the household income group to be accommodated by the Affordable Housing Units, and the formula for determining the monthly rent amount for each Affordable Housing Unit;
 - d. The term of affordability for the Affordable Housing Units;
 - e. A schedule for completion and occupancy of the Affordable Housing Units;
 - f. Provisions and/or documents for rights of first refusal or rental restrictions;
 - g. The Marketing Plan for rental of the Affordable Housing Units;
 - h. Provisions for monitoring the ongoing affordability of the Affordable Housing Units, and the process for qualifying prospective resident households for income eligibility and age qualifications (55 years or older); and
 - i. A description of the concession(s) or incentive(s) provided by the City.
 - j. Specific property management procedures for qualifying and documenting tenant income eligibility, establishing affordable rent and maintaining Affordable Housing units for qualified tenants;
 - k. Provisions requiring property owners to verify household incomes and maintain books and record to demonstrate compliance with this chapter;
 - l. Provisions requiring the Property Owner to submit an annual report to the city, which includes the name(s), address, and income of each household occupying target units, and which identifies the bedroom size and monthly rent or cost of each Affordable Housing unit;
 - m. Provisions describing the amount of, and timing for payment of, Administrative Fees to be paid to the City for the mandated term of compliance monitoring in accordance with the provisions of this chapter; and
 - n. Any additional obligations relevant to the compliance with Chapter 17.90 of the Clayton Municipal Code, *Affordable Housing Density Bonus Requirements*.

2. The project is subject to development impact fees. The applicant shall be responsible for all fees and environmental review costs, including those charged by the California Department of Fish and Wildlife.
3. Any major changes to the project as determined by the Community Development Director shall require Planning Commission review and approval. Any minor changes to the project as determined by the Community Development Director shall be subject to City staff review and approval.
4. No permits or approvals, whether discretionary or mandatory, shall be considered if the applicant is not current on fees, reimbursement payments, and other fees that are due.
5. Parking spaces shall be assigned to specific residential units. Each unit shall have one (1) assigned parking space. The number and location of the assigned parking space shall be stated in the rental agreement for each unit.
6. The applicant shall execute a shared parking agreement between 6170 High Street and 6450 Marsh Creek Road. The shared parking agreement shall be recorded on the deed for each parcel and shall be in a form acceptable to the City Attorney.
7. Prior to issuance of a building permit, the applicant shall assure there is a recorded easement in a form acceptable to the City Attorney between Site 1 and Site 2 for pedestrian access between parking lot areas.
8. Prior to the commencement of grading, demolition, or construction activities, the applicant shall submit a recycling plan for construction materials to the City for review and approval. The plan shall include that all materials that would not be acceptable for disposal in the sanitary landfill be recycled/reused. Documentation of the material type, amount, where taken, and receipts for verification and certification statements shall be included in the plan. The applicant shall submit deposits to the City to ensure good faith efforts of construction and demolition recycling. A deposit of \$2,000 per residence shall be submitted prior to issuance of the building permit for each residence, or demolition permit. Appropriate documentation regarding recycling shall be provided to the City. All staff costs related to the review, monitoring, and enforcement of this condition shall be charged to the deposit account.
9. Prior to issuance of demolition permits for on-site structures, the applicant shall show compliance with the NPDES Municipal Regional Permit (MRP 2.0) issued by the San Francisco Regional Water Quality Control Board regarding Mercury control and disposal. Building and site assessment shall be conducted to determine if any Mercury-containing devices (i.e. thermostats, etc.) or sources exist. If the assessment identifies any Mercury-containing devices or equipment, the devices or equipment shall be properly removed and disposed of at an acceptable recycling facility or landfill, so that demolition activities do not result in Mercury being scattered on site or entering storm drains. Where applicable,

documentation of site assessment and proper disposal shall be provided to the Community Development Department prior to the issuance of any new construction permit.

10. Prior to the issuance of demolition permits, the applicant shall show compliance with the NPDES Municipal Regional Permit (MRP 2.0) issued by the San Francisco Regional Water Quality Control Board regarding polychlorinated biphenyl (PCB) control and disposal. The applicant shall ensure proper management of potential PCB-containing materials and wastes during building demolition and disposing of PCB properly, so that demolition activities do not result in PCB entering storm drains. Prior to issuance of demolition permits, the applicant shall submit to the Community Development Department an analysis of the existing structures having PCB concentrations below 50 parts per million (ppm), or provide written documentation and evidence as to the type and style of all structures to be demolished that are single-family residential and/or wood frame structures. If the applicant is unable to obtain compliance by either of these measures, the applicant shall abate any PCB at or above 50 parts per billion (ppb) in accordance with an approved disposal plan to be submitted to the Community Development Department prior to issuance of demolition permits.
11. At least thirty (30) days prior to any demolition or groundbreaking activities, the applicant shall retain an exterminator who shall evaluate the site and make recommendations for the control and/or eradication of any on-site rodents. The exterminator's recommendations shall be subject to the review and approval of the Community Development Director. The applicant shall comply with the approved exterminator's recommendations prior to initiation of any demolition or groundbreaking activities.
12. 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 attorney's fees and disbursements arising out of or in any way relating to the issuance of this entitlement, any actions taken by the City relating to this entitlement, or the environmental review conducted under the California Environmental Quality Act for this entitlement and related actions. In addition, if there is any referendum or other election action to contest or overturn these approvals, the applicant shall either withdraw the application or pay all City costs for such an election.

GENERAL CONDITIONS

13. The project shall comply with the Clayton Municipal Code. All construction shall conform to the requirements of the California Building Code and City of Clayton standards.

14. The project shall be implemented as indicated on the application form and accompanying materials provided to the City and in compliance with the Clayton Municipal Code, or as amended by the Planning Commission.
15. No building permit will be issued unless the plan conforms to the project description and materials as approved by the Planning Commission and the standards of the City.
16. This approval expires two years from the date of approval (expires March 3, 2022), unless a building permit has been issued and construction has diligently commenced thereon and has not expired, or an extension has been approved by the Planning Commission. Requests for extensions must be received in writing with the appropriate fees prior to the expiration of this approval. No more than one, one-year extension shall be granted.
17. This approval supersedes previous approvals, if any, that have been granted for this site.
18. The general contractor shall install and maintain the erosion and sedimentation control devices around the work premises per the most current NPDES Municipal Regional Permit (MRP). Current MRP Is 2.0 and upcoming permit will be MRP-3.0.
19. All required easements or rights-of-way shall be obtained by the applicant at no cost to the City of Clayton. Advance permission shall be obtained from any property owners or easement holders for any work done within such property or easements.
20. Prior to issuance of the certificate of occupancy for each property, the public Improvement for that property including streets, sewers, storm drains, street lights, and traffic signs required for access to the site shall be completed to the sole satisfaction of the City Engineer or City Traffic Engineer.
21. City staff shall inspect the site for compliance with conditions of approval and approved plans prior to final inspection approval.
22. The applicant shall obtain an encroachment permit for all work to be done within the public right-of-way or easement, and peak commute-hour traffic shall not be impeded by construction-related activity. All on-site improvements not covered by the building permit including walkways, driveways, paving, sewers, drainage, curbs, and gutters must be constructed in accordance with approved plans and/or standards and a Site Development Permit approved by the City Engineer.
23. All existing easements shall be identified on the site plan and all plans that encroach into existing easements shall be submitted to the easement holder for review and approval, and advance written permission shall be obtained from any

property owner or easement holder for any work done within such property or easement.

24. Building permits for retaining walls shall be obtained as follows:
 - a. For major walls over three feet in height to be constructed during the mass grading phase, obtain a building permit prior to issuance of the grading permit.
 - b. For all other walls, obtain a building permit prior to issuance of permits for structures on the respective lot in accordance with the applicable California Building Code Standards.

NOISE CONTROL, DUST AND CONDITIONS FOR CONSTRUCTION ACTIVITY

25. An encroachment permit is required for all work in the public right-of-way. Restoration of existing improvements (curb, gutter, sidewalk, street section, etc.) shall be to the City of Clayton standards and as approved by the City Engineer.
26. The use of construction equipment shall be restricted to weekdays between the hours of 8:00 a.m. and 5:00 p.m., or as approved in writing by the City Manager.
27. The project shall be in compliance with and supply all the necessary documentation to comply with the City of Clayton Construction and Demolition Debris Recycling Program.
28. Driveway access to neighboring properties shall be maintained at all times during construction.
29. Standard dust control methods shall be used to stabilize the dust generated by construction activities in accordance with the Bay Area Air Quality Management District standards.
30. The site shall be fenced with locked gates by 7:00 p.m. The gates shall remain locked until 7:00 a.m. Contractors shall not arrive at the site prior to the opening of the gates. The name and contact information shall be placed at locations on the site for neighbors to contact in the circumstance there is a concern that needs to be addressed to the satisfaction of the City Engineer.
31. All construction equipment utilizing combustion engines shall be equipped with "critical" grade (rather than "stock" grade) noise mufflers or silencers that are in good condition. Back up "beepers" shall be tuned to insure lowest possible noise levels while also serving the safety purpose of the backup sound indicator.
32. Stationary noise sources shall be located at least 300 feet away from any occupied residential or business dwellings unless noise-reducing engine housing enclosures or other appropriate noise screens are provided.

33. Speeds of construction equipment shall be limited to 10 miles per hour (mph). This includes equipment traveling on local streets to and from the site.
34. Access shall be maintained to all driveways at all times.
35. There shall be no parking of construction equipment or construction worker's cars on residential or business streets at any time. A staging area shall be secured prior to issuance of a grading or building permit as determined necessary by the City Engineer.
36. Truck routes for the import or export of cut/fill material shall be identified and approved by the City Engineer prior to the issuance of any permits. Applicant shall be responsible for the repair of any damage to City streets (private and public) caused by the contractor's or subcontractor's vehicles.
37. Prior to construction, applicant shall ensure that the contractor shall contact City inspector for a pre-construction meeting. Haul route shall be submitted for review and approval by the City Engineer.
38. All construction activities must be designed to minimize potential spills from equipment and to provide a planned response in the event an accidental spill occurs. The applicant shall maintain spill equipment on site; there shall be a designated area if refueling takes place on site. Applicant shall insure all construction personnel are trained in proper material handling, cleanup and disposal procedures.
39. Prior to any demolition activities, a demolition permit shall be obtained and all demolition activities be performed in accordance with the Bay Area Air Quality Management District Regulation 11 Hazardous Pollutants, Rule 2 Asbestos Demolition, Renovation, and Manufacturing. The purpose of this Rule is to control emissions of asbestos to the atmosphere during demolition, renovation, milling and manufacturing and establish appropriate waste disposal procedures. These requirements specify the appropriate methods for survey, demolition/removal, and disposal of asbestos materials to control emissions and prevent hazardous conditions. Specifications developed for the demolition activities shall include the proper packaging, manifesting and transport of demolition wastes by trained workers to a permitted facility for disposal in accordance with local, State, and Federal requirements.
40. Prior to demolition or renovation activities that may disturb suspected lead based paint (LBP), actual material samples shall be collected or an XRF survey performed in order to determine if LBP is present. It should be noted that construction activities that disturb materials or paints containing any amount of lead are subject to certain requirements of the Occupational Safety and Health Administration (OSHA) lead standard contained in 29 CFR 1910.1025 and 1926.62. If lead-based paint is identified, the paint shall be removed by a qualified lead abatement contractor. Specifications developed for the demolition

activities shall include the proper packaging, manifesting, and transport of demolition wastes by trained workers to a permitted facility for disposal in accordance with local, State, and Federal requirements.

PROPERTY MAINTENANCE

41. A parking lot sweeping program shall be implemented that, at a minimum, provides for sweeping immediately prior to the storm season and prior to each storm event.
42. The site shall be kept clean of all debris (litter, boxes, junk, garbage, etc.) at all times.
43. No signs shall be installed on this site without prior City approval.
44. Any undeveloped areas on-site shall be maintained in an attractive manner that ensures fire safety and prevents any runoff onto the adjacent sidewalks.

AGENCY REQUIREMENTS

45. Applicable requirements of other agencies including, but not limited to the Contra Costa County Fire District, the Contra Costa Water District, City of Concord (Sanitation), and the East Contra Costa County Habitat Conservancy shall be met.

FEES

46. The applicant shall pay all fees required by the City Council and other applicable agencies.
47. The applicant shall pay all required fees at the time of building permit issuance.

GRADING

48. All grading shall be required grading and drainage plan prepared by a registered Civil Engineer, a soils report prepared by a registered Geotechnical Engineer and a Grading Permit approved by the City Engineer. The grading plans and soils report shall require review by the City's geotechnical consultant with all costs to be borne by the applicant.
49. All recommendations made in the Soil Engineers report (unless amended through the City's review) and all recommendations made by the City's geotechnical consultant shall be incorporated into the design and construction of the project.
50. Contour grading techniques with spot elevations shall be employed throughout the project to achieve a more natural appearance, even where this will increase the amount of grading.

51. Tops of cuts or toes of fills adjacent to existing public rights-of-way or easements shall be set back two feet minimum from said rights-of-way and easements.
52. Erosion control measures shall be implemented by the applicant per plans approved by the City Engineer for all grading work not completed before October 1. At the time of approval of the improvement and/or grading plans, an approved Erosion Control Plan prepared by a registered Civil Engineer shall be filed with the City Engineer.
53. All graded slopes in excess of 5 feet in height shall be hydroseeded no later than September 15 and irrigated (if necessary) to ensure establishment prior to the onset of the rainy season
54. The applicant's engineer shall certify the actual pad elevation for the lot in accordance with City standards prior to issuance of Building Permit.
55. Any grading on adjacent properties will require written approval of those property owners affected.
56. If cultural resources are discovered during subsurface excavations, the Contractor shall cease construction and a qualified archeologist shall be contacted to make recommendations for mitigation.
57. The plans shall include the boundary treatment shown on cross sections, drawn to scale, for retaining walls, fencing and drainage.
58. All elevations shown on the grading and improvement plans shall be on the USGS 1929 sea level datum or NAVD 88 with conversion information, or as approved by the City Engineer.

UTILITIES

59. In the circumstance the applicant or successor-in-interest applies to convert the project from a rental apartment project to a condominium subdivision, the applicant or successor-in-interest shall be required to underground all existing and proposed utilities in accordance with the applicable provisions of the Clayton Municipal Code (CMC) at that time.
60. Trash enclosures shall drain to sanitary sewer and shall incorporate methods to contain runoff at the front-gate and pedestrian access point to prevent storm water from entering the enclosure.
61. The sewer collection system shall be constructed to function as a gravity system. Sanitary sewer collection system shall be constructed to the standards of the City of Concord and Central Contra Costa Sanitary District. Inspections of sanitary sewer collection system shall be performed by City of Concord under contract to City of Clayton.

62. Water system facilities shall be designed to meet the requirements of Contra Costa Water District and the fire flow requirements of the Contra Costa County Fire Protection District. All requirements of the responsible agency shall be guaranteed prior to approval of the improvement plans. Any required offsite easements shall be obtained by the applicant at his/her own expense.
63. A reduced pressure backflow preventer assembly shall be installed on all water meter services.
64. Double detector check fire line backflow assemblies shall be enclosed within an easement granted to Contra Costa Water District, as needed, and at no cost to the City or the District.
65. The applicant shall provide adequate water pressure and volume to serve this development, as approved by the City Engineer. This will include a minimum residual pressure of 20 pounds per square inch (psi) with all losses included at the highest point of water service and a minimum static pressure of 50 psi.
66. All onsite utilities shall be privately maintained and connected to public facilities in accordance with City and applicable agency standards, as approved by the City Engineer.
67. All sanitary sewer system connections and improvements shall be submitted for reviewed and approved by the City Engineer and review and comment by the City of Concord (Sanitation).

DRAINAGE AND WATER QUALITY

68. For projects disturbing one (1) acre or more, the applicant shall comply with the State Construction General Permit requirements. The applicant shall be responsible for preparing the Stormwater Pollution Prevention Program (SWPPP), submit all required documents, and obtaining coverage by filing a Notice of Intent (NOI) with State Water Resource Control Board (SWRQB).
69. A copy of the SWPPP and the Notice of Intent (WDID) shall be submitted to the City prior to issuing permits for construction. The SWPPP and the WDID shall be kept at the job site during construction. The WDID number shall be included onto the cover sheet of the Grading Plans for the project.
70. Prior to approval of the grading plans, the applicant shall submit a drainage study to the City for review and approval, and to the Contra Costa County Flood Control and Water Conservation District (FC District) for review and comment. The applicant shall be responsible to pay directly for the agency's review.

71. Applicant shall comply with the requirements of Provision C.3 of the Municipal Regional Permit (MRP) of the State Regional Water Resources Control Board NPDES Permit as applicable to this project.
72. Stormwater control facilities (C.3 facilities) shall be maintained and operated by the applicant/property owner, in perpetuity, in accordance with the Operation and Maintenance Plan. The applicant/property owner shall provide periodic and annual inspection reports.
73. Applicant shall submit a comprehensive Stormwater Control Plan, construction plans, details, and calculations in accordance with the current Contra Costa Clean Water Program (CCCWP) C.3 Guidebook. Required offsite improvements and street(s) frontage improvement work shall be considered and included as a part of this project for compliance with C.3 requirements. The Stormwater Control Plan watershed drainage map shall include all impervious surface locations (i.e. streets, buildings, parking lots, walkways, etc.) to be used in the calculations for sizing C.3 facilities.
74. CCCWP C.3 online calculator shall be used in determining the size of the required C.3 facilities. Submit a printout and attach a copy in the Stormwater Control Plan.
75. Bio-retention basin side slopes shall not be steeper than 3H:1V.
76. Using C.3 bio-retention basin(s) as a detention basin(s) for the mitigation of increased peak flows shall be subject to the City Engineer's approval. If approved by the City Engineer, applicant shall submit hydrology and hydraulic study, calculations, and details to demonstrate compliance with the C.3 requirements as well as flood control requirements. Detention basin(s) design parameters and the calculations shall also be in accordance with Contra Costa County Flood Control guidelines.
77. Prior to City Approval of the plans and issuance of permits, the applicant shall submit a signed operation and maintenance agreement. The agreement shall be the City's standard form and subject to the review and approval by the City.
78. All storm water flows shall be collected onsite and discharged into an approved public storm drain system. No onsite drainage is allowed to flow over the sidewalk.
79. Applicant shall not increase storm water runoff to adjacent downhill lots unless either: (1) a Drainage Release is signed by the property owner(s) of the affected downhill lots and recorded in the office of the County Recorder; or (2) site drainage is collected and conveyed in approved drainage facilities within a private drainage easement through a downhill property. This condition may require collection of on-site runoff and construction of an off-site storm drainage

system. All required releases and/or easements shall be obtained prior to issuance of any building permits.

80. A structure shall be installed at all pipe intersections, change of direction, or change in slope as approved by the City Engineer.

STREET IMPROVEMENTS

81. Sidewalks, curb, gutter, sidewalk and street pavement shall be constructed and/or replaced (if cracked, broken or damaged) in the public right-of-way along the entire project frontage as required by the City Engineer and at no cost to the City. Driveway aprons shall be removed and/or replaced with new curb, gutter and sidewalk to match the proposed development. Corner curb ramps (handicap ramps) that do not meet current Federal ADA and State Title 24 Standards shall be replaced to current standards. Existing street pavement section shall be removed and replaced along the frontage of the property to the centerline of the street if the section is cracked or damaged in any way (regardless if it is damaged by project construction or not), or other roadway preservation methods as approved by the City Engineer. All required public easements or rights-of-way shall be offered to the City. All improvements shall be designed and constructed to the satisfaction of the City Engineer.
82. All streets shall be paved and improved after utilities are installed in accordance with the City of Clayton Standard Drawings and Design Guidelines and the approved plans.

LANDSCAPING

83. Sight distance triangles shall be maintained per Chapter 12.08 of the CMC, Site Obstructions at Intersections, or as approved by the City Engineer. Landscaping and signage shall not create a sight distance problem.
84. Detailed landscaping and irrigation plans for the entire site shall be submitted to the City for review and approval. All landscaping and irrigation shall be installed in accordance with approved plans prior to the issuance of certificates of occupancy for this building.
85. Landscaping for the project shall be designed to comply with the applicable requirements of City of Clayton Municipal Code. The State Model Water Efficient Landscape Ordinance (MWELo). Prior to issuance of a building permit, the applicant shall demonstrate compliance with the applicable requirements of the MWELo in the landscape and irrigation plans submitted to the City.
86. Landscape shall show immediate results. Landscaped areas shall be watered, weeded, pruned, fertilized, sprayed, and/or otherwise maintained as necessary. Plant materials shall be replaced as needed to maintain the landscaping in accordance with the approved plans. Plant material selection shall avoid plant

species that are known to be susceptible to disease (e.g., Platanus Blood Good) or drop fruit on hard surfaces and walkways causing a maintenance or safety concern.

87. All trees shall be a minimum 15-gallon size and all shrubs shall be a minimum 5-gallon size.

PROJECT SPECIFIC CONDITIONS

88. Any cracked or broken sidewalks shall be replaced as required by the City Engineer.
89. All rooftop mechanical equipment shall be screened from the public right-of-way and the residential properties to the west of the subject property. A line of sight study shall be submitted with the building permit submittal confirming the equipment is screened.
90. Asphalt paving shall have a minimum slope of two percent (2%), concrete paving shall have a minimum slope of 0.75%, except asphalt paving for identified accessible parking stalls and access routes shall have a minimum slope of 1.5% and a maximum slope of 2%, or as approved by the City Engineer.
91. All on-site curbs, gutters and sidewalks shall be constructed of Portland cement concrete.
92. All walkways adjacent to parking areas with vehicle overhang shall be a minimum of six and a half (6½) feet wide.

TREE PROTECTION CONDITIONS

93. The following construction policies and guidelines for tree preservation and protection put forth by the City of Clayton shall be followed during project implementation:
 - a. The applicant shall submit for the review and approval of the Community Development Director a tree protection plan to identify the location of the tree trunk and dripline of all on- and off-site trees subject to City of Clayton Municipal Code Section 15.70.020.
 - b. A protective fence shall be installed around all trees subject to the tree protection plan. The protective fence shall be installed prior to commencement of any construction activity and shall remain in place for the duration of construction.
 - c. Grading, excavation, deposition of fill, erosion, compaction, and other construction-related activities shall not be permitted within the dripline or at locations which may damage the root system of trees subject to the tree protection plan, unless such activities are specifically allowed by the tree protection plan. Tree wells may be used if specifically allowed by the tree protection plan.

- d. Oil, gas, chemicals, vehicles, construction equipment, machinery, and other construction materials shall not be allowed within the dripline of trees subject to the tree protection plan.
- 94. Trees which are identified for preservation, and are subsequently removed during construction, shall be replaced by new trees or shall be required to pay an in-lieu fee equal to 200% of the value (as established by the International Society of Arboriculture) of the original tree(s) to be preserved.
- 95. The Community Development Department shall review and approve grading and improvement plans to ensure adequate measures are taken to protect trees.

LANDSCAPING CONDITIONS

- 96. The project shall comply with all applicable requirements and regulations as they pertain to the Landscape Water Conservation Standards and the Water Efficient Landscape Ordinance.
- 97. Three sets of the landscape and irrigation plans shall be submitted with the grading and improvement plans for review and approval by the Community Development Department, Engineering Department, and the Maintenance Department. These plans shall be prepared by a landscape architect.
- 98. Installation of all irrigation and landscaping shall be performed by a licensed contractor. Open trench inspection of the irrigation installation in areas to be maintained by the City is subject to approval of the Maintenance Department. Prior to the final inspection by the Maintenance Department, the installation shall be approved by the landscape architect.
- 99. All trees shall be planted at least ten (10) feet away from any public water, sewer, or storm drain lines, unless a closer location is approved by the City. All trees shall be installed with support staking. All nursery stakes must be removed from trees. All trees planted within eight (8) feet of a sidewalk or driveway shall be installed with root guards.

EXPIRATION CONDITIONS

- 100. The Tree Removal Permit (TRP-24-17) shall expire simultaneously with the expiration of the Site Plan Review Permit (SRP-04-17), pursuant to the permit expiration provisions listed in Chapter 17.64 of the Clayton Municipal Code.

GENERAL CONDITIONS

- 101. The applicant shall obtain the necessary approvals from the Contra Costa County Fire Protection District.

102. The applicant shall provide an adequate and reliable water supply for fire protection as set forth in the Uniform Fire Code.
103. The access driveway/roadway and turnaround improvements must be completed and inspected by the Contra Costa County Fire Protection District (CCCFPD) prior to construction on the two residential lots.
104. All proposed residences are required to be protected with an approved automatic fire sprinkler system complying with the 2013 edition of NFPA 130 or Section R313.3 of the 2013 California Residential Code. A minimum of two (2) sets of sprinkler plans shall be submitted to the CCCFPD for both residences for review and approval prior to installation.
105. Additional requirements may be imposed by the CCCFPD. Before proceeding with the project, it is advisable to check with the CCCFPD located at 4005 Port Chicago Highway, Concord, 925-941-3300.
106. The applicant shall comply with all applicable State, County, and City codes, regulations, and standards as well as pay all associated fees and charges.
107. All construction and other work shall occur only between 7:00 a.m. and 5:00 p.m. Monday through Friday. Any such work beyond these hours and days is strictly prohibited unless specifically authorized in writing by the City Engineer (Clayton Municipal Code Section 15.01.101).
108. The applicant shall obtain the necessary building permits from the Contra Costa County Building Inspection Department. All construction shall conform to the California Building Code.
109. Prior to issuance of a Certificate of Occupancy for any residential building, the applicant shall install security cameras to monitor primary individual building entries and parking areas with the ability to archive and monitor the imaging to the satisfaction of the Chief of Police.
110. In the circumstance the applicant or successor-in-interest applies to convert the rental apartment project to a condominium subdivision, the applicant or successor-in-interest shall pay Quimby Act fees in accordance with applicable provisions of the Clayton Municipal Code (CMC) and City adopted fee schedule in effect at that time.
111. The applicant shall prepare a property maintenance program to address on-going building maintenance, landscaping, parking lot maintenance, and tenant maintenance responsibilities to the satisfaction of the City Attorney.
112. Prior to issuance of a City demolition and/or grading permit the applicant shall complete a Green Infrastructure Feasibility analysis, as required by the San Francisco Rational Water Quality Control Board in MRP 2.0, to determine

opportunities to address existing frontage runoff into planned or new bio-retention areas behind the back of curb. If such analysis determines these are feasible, any Green Infrastructure shall be maintained by the abutting property owner in perpetuity.

113. The applicant is advised this project is subject in perpetuity to the required (annual) Operations and Maintenance inspections by the City for the C.3 facilities at the costs established and updated annually in the City Fees and Charges Schedule.
114. The trash enclosures shall have solid metal doors, a solid roof and ventilation. The proposed trash enclosures need to be enlarged in order to have internal clear dimensions that are adequate to accommodate the required refuse and recycling dumpsters/containers and resident accessibility to utilize them. The trash enclosures must be located in close proximity to the access driveway near the public right-of-way to the satisfaction of Republic Services and the City Engineer to assure accessibility for trash removal and adequate sight distance to assure the public the safety.
115. All landscaping along Marsh Creek Road and along High Street behind the back of curb shall be maintained by the abutting property owner in perpetuity.
116. Prior to the issuance of the first building permit for the project, the applicant shall submit plans for plan check that show a minimum of 106 off-street parking stalls for the project (minimum 31 stalls at 6170 High Street, minimum 37 stalls at 6450 Marsh Creek Road and minimum 38 stalls at 6490 Marsh Creek Road), consistent with the revised site plans approved by this resolution.
117. Following the City's identification of an appropriate project, and prior to the issuance of the first Certificate of Occupancy, the applicant shall pay \$5,000 to the City toward the cost of installation of multimodal safety improvements and traffic calming measures on Marsh Creek Road in the vicinity of the project site.
118. The property owner shall provide bus passes for up to two years to the tenants in the development and establish a car share program to facilitate reducing on-site parking demand to the satisfaction of the Community Development Director. Bus passes shall only be offered to tenants who request passes and provided for up to two years to tenants who demonstrate actual usage thereof.
119. Prior to the issuance of the first Certificate of Occupancy the applicant shall pay \$2,500 to the City as its sole contribution to the City's general interest in and efforts to plant trees at an off-site location within the City of Clayton to increase carbon absorption.

(Remainder of page left blank intentionally.)

PASSED, APPROVED and ADOPTED by the City Council of Clayton, California at a regular public meeting thereof held on the 3rd day of March 2020, by the following vote:

AYES: Mayor Pierce, Councilmembers Catalano and Wolfe.

NOES: Vice Mayor Wan and Councilmember Diaz.

ABSENT: None.

ABSTAIN: None.

THE CITY COUNCIL OF CLAYTON, CA



Julie Pierce, Mayor

ATTEST:



Janet Calderon, City Clerk

Attachment D

Public Comments

The Olivia on Marsh Creek
Request for Extension of Approvals
Planning Commission Hearing, May 25, 2021

Interim CDD

From: Steve Arnett <stevearnett2002@gmail.com>
Sent: Thursday, May 20, 2021 11:21 PM
To: Interim CDD
Subject: Olivia Project Extension

To whom it may concern,

I am contacting you to voice my opposition regarding the building permit extension for the Olivia Project in Clayton.

We moved to Clayton last year for the charm, open spaces and beautiful setting. This past year we watched how divisive this project has been among neighbors, and that is absolutely not what Clayton needs in our quaint, rustic downtown. Given the political climate, we need to find ways to come together. The community support I have witnessed for this project is minimal, if not non-existent.

I also need to voice my frustration with the bait and switch we have experienced in regards to the Olivia. Even in the most recent extension letter, this project is labeled as senior housing. This project is NOT a senior housing project. This is a high density housing project in a landlocked bedroom community in one of the last small towns in the bay area. The city and the developer BOTH need to "do the right thing" and offer a transparent and honest project plan to our residents.

This is an unfortunate example of Sacramento overreach, which I believe we should oppose and combat at any cost. Any and all concessions/bonuses should be re-evaluated based on the actual project type. If water access, environment, sewage, electrical, historical context, traffic, parking, etc have not all been evaluated, then this project is not ready to break ground in our downtown.

Sincerely,
Steve Arnett
Clayton, CA

Interim CDD

From: Christopher Zwergel <chris.zwergel@zwergeltech.com>
Sent: Thursday, May 20, 2021 7:30 PM
To: Interim CDD
Subject: Olivia Project - Approvals Extension

Attention City Staff:

I oppose the extension of approvals. No go for me!! I oppose this whole dang project in general.

Thanks in Advance,

Z

Chris Zwergel
Cloud Architect / Founder
Zwergel Technology
90 Kelok Court, Clayton, CA 94517
C: 925.494.8536
E: chris.zwergel@zwergeltech.com
Skype: chris.zwergel
Twitter: @crashtesttek

Interim CDD

From: Dale Wu <r1ryder@pacbell.net>
Sent: Thursday, May 20, 2021 10:48 AM
To: Interim CDD
Subject: Olivia project

I live in Dana Hills and am opposed to any more extensions or favors for the developers of this project; they've had plenty of time already. Our household uses Marsh Creek Road to go out of and come back to Dana Hills many days a week. This project would negatively affect all of us living near Marsh Creek Road because of the increased traffic and congestion, and the disruptions to our quiet and peaceful town. Please vote not to grant extensions to the developer.

Sincerely,
Carol Wu

Interim CDD

From: Theresa Ruscitti <truscitti@me.com>
Sent: Thursday, May 20, 2021 9:08 AM
To: Interim CDD
Subject: Olivia Extension

I hope you will vote to allow the extension in time so that the proper environmental permits can be obtained for the Olivia development.

I am a 23-year resident of Clayton.

Theresa Ruscitti

Interim CDD

From: Katherine Aryeetey <kreate10@gmail.com>
Sent: Thursday, May 20, 2021 6:00 AM
To: Interim CDD

I am opposed to the construction project in the Stranahan area and object to ANY extension for the developer. Please shut it down.

Respectfully,
Katherine Aryeetey

Interim CDD

From: Brooke Arnett <broccoliarnett@gmail.com>
Sent: Thursday, May 20, 2021 9:43 AM
To: Interim CDD
Subject: Oppose Olivia Project

To whom it may concern:

This email is to advise that I oppose an extension to building permits for the Olivia Project in Clayton. This project has already divided this town enough.

- concerned neighbor on Mountaire Circle, Brooke Arnett

Interim CDD

From: Tracy Cooper <myjtrac1@gmail.com>
Sent: Wednesday, May 19, 2021 10:50 PM
To: Interim CDD
Subject: Reject Olivia project extension

City council members

Please listen to the community you are supposed to be representing and reject the Olivia project extension request.

We do not want this project nor other high density housing in our community.

Tracy Cooper

Sent from my iPhone

Attachment E

Approved Project Plans (online at <https://ci.clayton.ca.us/community-development/planning/development-activity/clayton-senior-housing-project/>)


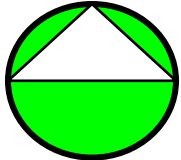
Attachment F

Vicinity Map

The Olivia on Marsh Creek
Request for Extension of Approvals
Planning Commission Hearing, May 25, 2021



VICINITY MAP

	<p>The Olivia on Marsh Creek Project DBA-01-19/SPR-04-17/TRP-24-17 6170 High Street (APN: 119-021-063) 6450 Marsh Creek Road (APN: 119-021-055) 6490 Marsh Creek Road (APN: 119-021-013)</p>	<p>N</p>  <p>(Not to Scale)</p>
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