

Minutes
City of Clayton Planning Commission
Regular Meeting
Tuesday, August 24, 2021

1. CALL TO ORDER

Vice Chair Terri Denslow called the meeting to order at 7:01 p.m.

2. PLEDGE OF ALLEGIANCE

Commissioner Bassam Altwal led the Pledge of Allegiance.

3. ROLL CALL

Present: Vice Chair Terri Denslow
Commissioner Bassam Altwal
Commissioner Justin Cesarin
Commissioner Frank Gavidia
Commissioner Ed Miller

Absent: None

4. SELECTION OF CHAIR AND VICE CHAIR

Commissioner Altwal moved and Commissioner Cesarin seconded a motion to select Vice Chair Terri Denslow as Chair and Commissioner Miller as Vice Chair. The motion passed 4-1, with Commissioner Gavidia voting no.

5. PRESENTATIONS AND ANNOUNCEMENTS

Chair Denslow welcomed Commissioner Cesarin to the Planning Commission.

6. ACCEPTANCE OF THE AGENDA

Vice Chair Miller moved and Commissioner Altwal seconded a motion to accept the agenda as presented. The motion passed 5-0.

7. PUBLIC COMMENT

None

8. CONSENT CALENDAR

A. Approval of Planning Commission Meeting Minutes.

Approval of the minutes for the June 22, 2021 Planning Commission meeting.

Vice Chair Miller moved and Commissioner Altwal seconded a motion to approve the June 22, 2021 Planning Commission meeting minutes, as amended. The motion passed 5-0.

9. PUBLIC HEARINGS

A. **Weichert, Realtors – Request for approval of a Use Permit to allow the operation of a real estate business in a ground-floor tenant space located in the Town Center (UP-02-2021).**

Weichert, Realtors, the applicant, requests approval of a Use Permit (UP-02-2021) to allow the operation of a real estate business (office uses) in a ground-floor tenant space located in the Town Center. The real estate business is proposed to operate Monday through Friday from 9:00 a.m. to 5:00 p.m. The real estate office is proposed to be located at 1028 Diablo Street (Assessor's Parcel Number 119-014-006).

CEQA Status: The subject Use Permit request is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Categorical Exemption Class 1 (Existing Facilities), section 15301 of the State Guidelines for Implementation of CEQA.

Chair Denslow recused herself from this item for conflict-of-interest reasons and left the meeting.

Vice Chair Miller took over as Acting Chair.

Assistant Planner Milan Sikela presented the item.

Commissioner Altwal asked if a permit had been issued for demolition or construction work related to the business moving into the subject tenant space. Assistant Planner Sikela indicated that he was not aware that any demolition or construction was needed as part of the business moving into the subject tenant space but that he would defer to the applicant to confirm.

Commissioner Cesarin asked whether the Use Permit application was complete given that there was no General Plan map, Zoning map, and the floor plan was not to scale. Assistant Planner Sikela responded that the Use Permit application forms list more submittal items than what is germane to this particular use. Some of the information staff already has, such as the General Plan land use designation and the Zoning classification. Other submittal items listed, such as the landscape plan and circulation plan do not pertain to the subject use permit request. Interim Director Dana Ayers added that, with such items as the General Plan and Zoning, staff would only ask for those items if the applicant was proposing to change the General Plan land use designation or Zoning classification, which was not the case with the subject Use Permit request. In this instance, staff did not require architectural drawings since there were no proposed changes to the structure or tenant space.

Commissioner Gavidia had the following questions and comments:

- The only reason this Use Permit request has been brought before the Planning Commission is because the Town Center Specific Plan encourages retail uses in ground floor locations, correct? Director Ayers responded, yes, there are requirements in the Town Center Specific Plan and Clayton Municipal Code that professional office uses are only allowed in ground-floor locations with Planning Commission approval of a Use Permit.
- When was that requirement established? Assistant Planner Sikela said that, according to the Clayton Municipal Code, the applicable Section, which is Section 17.60.030.C, was adopted in 2008.
- 2008 is when the Retail Study was conducted.

- It appears that the other existing realtor offices located in ground floor tenant spaces within the Town Center located in those tenant spaces prior to 2008 and, as a result, have been grandfathered in.

Commissioner Altwal had the following comments:

- In 2015, the Planning Commission approved a Use Permit for a dentist office to move into a ground floor tenant space in the Town Center.
- This Use Permit requirement was established to encourage non-retail uses to be located on upper floors and retail uses to be located in ground floor locations in order to enhance revenue for the City.
- Retail uses are very difficult to bring to Clayton.
- The building that Mazzei Realty is located in was not designed to be a retail building but, instead, was designed for office uses.
- There are several realtor offices located in ground floor tenant spaces in the Town Center: two in the Mazzei Realty building and one on the ground floor of the Village Oaks building.

Commissioner Cesarin indicated the windows on the front of the subject tenant space are quite large and it would be good to emphasize their size in the narrative of the application.

Julie Rogers, the applicant, introduced herself and had the following comments:

- She moved from a tenant space in Clayton Station to the subject tenant space on Diablo Street but was not aware of the ground floor retail limitations of the Town Center Specific Plan until after she started moving furniture and boxes into the subject tenant space.
- She has already gotten out of the lease from her Clayton Station tenant space and, as a result, was committed to moving into the subject tenant space but, given the Use Permit requirements for non-retail ground floor locations, has not conducted any business.
- She has operated Weichert, Realtors for 16 years.
- Her business will bring clients and customers to the Town Center who will patronize other businesses in downtown Clayton.
- No demolition or construction will occur in the subject tenant space.

Commissioner Altwal had the following questions and comments:

- Will you be applying for a permit to perform demolition or construction? Ms. Rogers responded no, there will be no demolition or construction and that she had only painted the interior walls.
- According to the floor plans, it appears that there are walls and bathrooms inside the subject tenant space. Ms. Rogers indicated that the walls and bathrooms are existing and will not be altered.

Commissioner Gavidia had the following questions and comments:

- Why do you need an office as it seems that the trends are toward real estate businesses moving on-line? Ms. Rogers responded that there are clients that want to come to an office, and there would be a mortgage brokerage in the office, as well. Two to three clients per day typically come into an office. She would not feel comfortable without an office space.
- Do you think office uses will still be relevant in three to five years? Ms. Rogers responded yes, there is still a need to meet people face to face.

Commissioner Cesarin had the following questions:

- Only three or four clients per day are anticipated to come to the office? Ms. Rogers responded that some days there may be no clients coming to the office and other days there may be five clients that come to the office.

- Is there a certain demographic that patronizes the realty office? Ms. Rogers responded that she has clients from all demographics.
- How do you think your business would complement other Town Center businesses? Ms. Rogers indicated her business will bring in people that would normally not come into downtown Clayton, and those people will patronize the other businesses in the Town Center.

Debra Pryor, owner of the property, joined the meeting and was invited by the Acting Chair to speak on the item.

Commissioner Cesarin had the following questions:

- How long was Royal Rooster located in the subject tenant space? Ms. Pryor responded 13 years.
- When did Royal Rooster provide notification that they were moving out? Ms. Pryor responded that Royal Rooster notified her in April 2021.
- When did you list the property for lease? Ms. Pryor indicated that the owner of the Royal Rooster formally advised her that she was vacating the tenant space about a month before moving out at the end of June.
- How long after Royal Rooster moved out did Ms. Rogers contact you? Ms. Pryor responded that Ms. Rogers contacted her approximately one week later.
- Did any other businesses contact you? Ms. Pryor responded that the Clayton Farmhouse contacted her but she was not comfortable with the short time the Clayton Farmhouse had been in business compared to the 16 years that Weichert, Realtors has been in business.

Commissioner Altwal had the following questions:

- Did any other businesses show interest in leasing the tenant space? Ms. Pryor responded that one other person contacted her who owned a coffee business, but the tenant space is already next door to a coffee shop, Cup O' Jo.
- Ms. Rogers made contact regarding leasing the tenant space within one week after the tenant space was listed for lease? Ms. Pryor responded that was correct.

The public hearing was opened.

Mike Kavanaugh had the following comments:

- He is the broker of Town and Country realtor who has ben located on the second floor of Flora Square since 2009.
- He stated he was denied a permit when he initially tried to move in to the tenant space behind Village Market.
- The ground floor tenant space underneath his second floor tenant space has been vacant since the Flora Square building was opened over 12 years ago.
- He would like to move into a ground floor tenant space in the Flora Square building or another ground floor tenant space within the Town Center.
- The subject tenant space only being vacant for one week does not constitute a hardship, especially when a viable retail tenant such as Clayton Farmhouse was ready to lease the property.

Pastor Shawn Robinson from the Clayton Community Church had the following comments:

- We support approval of the Use Permit.
- Weichert, Realtors are good people who want to invest in our community.
- Retail uses are almost impossible to have move into Clayton.

- The Town Center Specific Plan was well-intentioned when it was first enacted, but maybe it is time for a change, and the requirement for non-retail uses to obtain a Use Permit could be removed from the Town Center Specific Plan.
- The revenue that the City is receiving from retail sales tax is nominal.

There being no one else present requesting to speak on the item, the Acting Chair closed the public hearing.

Acting Chair Miller had the following comments:

- We are currently in a very depressed economic time due to the pandemic.
- There are many vacant tenant spaces in the Town Center and that number appears to be growing.
- He noticed that Snap Fitness has vacated their tenant space in the Village Oaks building.

Commissioner Cesarin had the following comments:

- Weichert, Realtors is moving from one location in Clayton to another, so there is not really a new business being added to the City.
- We have to ascertain would Weichert, Realtors add pedestrian activity to the Town Center.
- As Commissioner Gavidia indicated, a lot of real estate businesses are moving on-line.
- The Royal Rooster was located in the subject tenant space for 13 years, and it took a global pandemic to force it to go out of business.
- Weichert, Realtors does not appear to complement the Town Center given the existing realty companies that are already located in downtown Clayton.
- By leaving Clayton Station and moving to the Town Center, the applicant is merely filling one vacancy and creating another.

Commissioner Gavidia had the following comments:

- I have been in Clayton for 20 years and have seen business come and go in the subject tenant space.
- Clayton cannot support the retail that is envisioned in the Town Center Specific Plan.
- The requirement that non-retail businesses need a Use Permit to be located in a ground floor tenant space in the Town Center is obsolete.
- By keeping the Use Permit requirement for non-retail uses to be located in ground floor tenant spaces, we will be seeing more and more vacant buildings in the Town Center.
- I do not want to see a building owner go out of business.

Commissioner Gavidia moved to approve the Use Permit. There was no second so Commissioner Gavidia withdrew his motion.

Commissioner Altwal had the following questions and comments:

- The requirement that non-retail businesses need a Use Permit to locate in a ground floor tenant space in the Town Center had been established to regulate the uses in the Town Center.
- Without the requirement that non-retail businesses need a Use Permit to be located in a ground floor tenant space in the Town Center, we would be inundated with non-retail business, and the vision and character of the Town Center would be lost.
- Mr. Kavanaugh indicated that he was rejected by the City several times when he proposed to move into a ground floor tenant space.

- Having the subject tenant space be vacant for only one week does not constitute a hardship.
- The Clayton Farmhouse would have been a better use for the subject tenant space.
- However, we need businesses in Clayton which is better than having vacant tenant spaces in the Town Center.
- None of the rationales provided warrant Weichert, Realtors moving into the subject tenant space.

Acting Chair Miller inquired what constitutes an economic hardship? Director Ayers responded that none of the required Use Permit findings was based on economic hardship. She noted that staff's analysis and recommendation to approve the Use Permit was based on the physical characteristics of the subject building which has only three windows approximately six feet wide each and a large blank wall that does not promote merchandise visibility important for retail, and the location of the subject building which is not bookended by other retail businesses.

Assistant Planner Sikela indicated that, regarding the claim that there have been previous rejections by the City of Use Permit applications for a non-retail use to located in a ground floor tenant space, in his 20 years with the City, he did not recall any formal Use Permit application that had been denied. Rather, every Use Permit application that he recalled seeing come before the Planning Commission for office, massage, dental, or fitness uses on the ground floor had been approved. Since being employed by the City in 2001, there had not been a recommendation of denial by staff for these types of uses, and the Planning Commission had not denied a Use Permit request for these types of uses.

Director Ayers indicated that Use Permits are site-specific. It should be noted that the Flora Square building has a different set of circumstances and requirements based on the fact the City was involved in the development of the Flora Square building through the Redevelopment Agency which resulted in that building being more constrained in its uses. The subject building is privately-owned and, therefore, is not subject to some of the same site-specific requirements as the Flora Square building.

Commissioner Altwal inquired that, if the subject Use Permit request was for a tenant space located on Main Street or Center Street, would staff's recommendation be different? Director Ayers responded that quite possibly that could have been the case. Staff would analyze the circumstance of each structure and tenant space on a case-by-case basis. The subject structure is on a side street which was one of the factors staff considered in developing a recommendation for this Use Permit request.

Commissioner Altwal indicated that, based on staff's clarifications, approval of this Use Permit would not be setting a precedent for ground floor real estate businesses to receive automatic approval of future Use Permit requests.

Director Ayers indicated the following:

- The analysis staff provided for this Use Permit request is not generic to the entire Town Center Specific Plan area.
- Staff only looked at this particular building which is located on a side street and not on one of the two main corridors in the Town Center: Main Street and Center Street.
- The subject building is not bookended by other retail buildings.

- If one stands on the southeast corner of Main Street and Diablo Street and looks down the east side of Diablo Street, there is very little of interest to draw a pedestrian down Diablo Street.
- There is only a parking lot and a field beyond and no retail development that would entice people to walk down Diablo Street.
- Staff considered at the challenges this building would face with a retail tenant.
- Not to say that a retail business would struggle to survive, but there is not other retail around this building.

Commissioner Cesarin expressed concern that we are continuing down a path that is not sustainable for the City if we are going to fill up all of our ground floor tenant spaces in the Town Center with office uses.

Acting Chair Miller moved and Commissioner Gavidia seconded a motion to conditionally approve a Use Permit (UP-02-2021) to allow Weichert, Realtors to operate a real estate business (office use) in a ground-floor tenant space located in the Town Center at 1028 Diablo Street. The motion passed 3-1, with Commissioner Cesarin voting no.

Chair Denslow returned to the meeting at 8:46 p.m.

10. ACTION ITEMS

None.

11. COMMUNICATIONS

Vice Chair Miller inquired to Director Ayers if, in accordance with the Brown Act, it would be possible to have a closed session discussion during Planning Commission meetings in the future for matters pertaining to legal issues. Director Ayers indicated that she would consult with the City Attorney for direction on this query and respond to the Planning Commission accordingly.

12. ADJOURNMENT

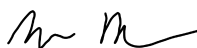
The meeting was adjourned at 8:49 p.m. to the regularly-scheduled meeting of the Planning Commission on September 14, 2021.

Respectfully submitted:



Dana Ayers, AICP, Interim Secretary

Approved by the Clayton Planning Commission:



Chair Terri Denslow