

Minutes
Clayton Planning Commission Meeting
Tuesday, November 13, 2018

1. CALL TO ORDER, ROLL CALL, PLEDGE TO THE FLAG

Chair Bassam Altwal called the meeting to order at 7:00 p.m. at Hoyer Hall, 6125 Clayton Road, Clayton, California.

Present: Chair Bassam Altwal
Vice Chair Peter Cloven
Commissioner William Gall
Commissioner Carl Wolfe

Absent: Commissioner A. J. Chippero

Staff: Community Development Director Mindy Gentry
Assistant Planner Milan Sikela, Jr.

2. ADMINISTRATIVE

- 2.a. Review of agenda items.
- 2.b. Declaration of Conflict of Interest.
- 2.c. Commissioner William Gall to report at the City Council meeting of November 20, 2018.

3. PUBLIC COMMENT

Shonece Barney inquired about the status of the St. John's Episcopal Church Preschool Use Permit.

Assistant Planner Sikela responded that staff is in the process of reviewing the Use Permit application materials and, at the conclusion of staff's completeness review, staff will provide correspondence of its status.

4. MINUTES

Approval of the minutes for the August 14, 2018 Planning Commission meeting.

Vice Chair Cloven moved and Commissioner Wolfe seconded a motion to approve the minutes, as amended. The motion passed 4-0.

5. PUBLIC HEARINGS

- 5.a. **SPR-04-18, Site Plan Review Permit, Aaron Kalt, 199 Mountaire Parkway, APN: 119-381-004.** A request for approval of a Site Plan Review Permit to allow a previously-constructed retaining wall located in the City's right-of-way. The location of the retaining wall extends from the front right corner of the subject property into the City's right-of-way, running parallel with the exterior side property line, to the rear corner where it turns 90 degrees and continues along the rear property line. The retaining wall measures a maximum of approximately 41 inches in height and 88 feet in length. Pursuant to California Environmental Quality Act (CEQA) Guideline Section 15303(e) – New Construction or Conversion of Small Structures, the project is categorically exempt from CEQA.

Assistant Planner Sikela presented the staff report.

The public hearing was opened.

Mike Murphy, 187 Mt. Wilson Way, expressed support of the project approval.

Robert Brenneman, 194 Mt. Wilson Way, submitted a letter representing his and his wife Loretta Brenneman's support of project approval and also verbally expressed support of project approval.

Wendy Murphy, 187 Mt. Wilson Way, expressed support of project approval.

Aaron Kalt, the applicant, indicated the following:

- The sideyard and public right-of-way area where the wall is located was very unimproved with overgrown juniper trees and dirt.
- The neighbors have supported his work on trying to improve his sideyard and the public right-of-way

Vice Chair Cloven indicated that the project has greatly improved the sideyard area and asked Mr. Kalt if he was aware that he might need a permit.

Chair Altwal asked Mr. Kalt if he was aware, when he started constructed the project, that he was doing construction in the public right-of-way.

Mr. Kalt responded with the following comments:

- He was not aware that he needed a permit for the project or that the project was being constructed in the public right-of-way.
- He thought that his project would be no problem since there are a multitude of examples in the Dana Hills subdivision of retaining walls and fences that are placed in the same location as his project.

Commissioner Gall asked Mr. Kalt if the fence is also located in the public right-of-way along with the retaining wall.

Mr. Kalt responded that the fence is located on his property.

Chair Altwal asked if he was doing any work on the project currently.

Mr. Kalt responded that he has not done any work on the project since being contacted by the City.

The public hearing was closed.

Commissioner Gall indicated that, when he read the staff report, it appeared that the City might be setting precedent to allow private improvements in the City's right-of-way.

Assistant Planner Sikela responded that the City Council was concerned about the subject private improvements being built in the City's right-of-way so, in order to provide a courtesy to the applicant as well as to avoid setting a precedent, the City Council allowed this project to encroach into the City's right-of-way but will not allow future encroachments.

Commissioner Gall praised the applicant for his hard work in trying to work with the City on this issue.

Commissioner Wolfe asked if the City Council already approved the encroachment of the project into the City's right-of-way, and what is the Planning Commission rendering a decision on tonight.

Director Gentry responded that the City Council has the purview to allow encroachments to occur in the City's right-of-way whereas the Planning Commission's review of this project was triggered by the fact that the retaining wall is required to have a building permit and is visible from public streets and sidewalks. If a retaining wall needs a permit and is visible from public areas, a Site Plan Review Permit before the Planning Commission is required.

Vice Chair Cloven asked are there other retaining walls in the City that are encroaching into the City's right-of-way similar to the subject retaining wall.

Director Gentry replied that the City's code enforcement responds on a reactionary complaint basis and does not have the staffing and resources needed to perform proactive code enforcement.

Chair Altwal indicated he understood the City's Council's direction that no future private encroachments in the City right-of-way would be allow and asked if this project is considered a "future" encroachment.

Assistant Planner Sikela responded that, since the encroachment of the project into the City's right-of-way occurred prior to and was the impetus for the City Council's decision, the project would not constitute a future encroachment.

Commissioner Wolfe asked if staff receives a complaint regarding another existing private encroachment elsewhere in Clayton, will the property owner be required to remove it.

Director Gentry responded that, if the property owner can demonstrate that the private encroachment is already existing and is not new construction, the private encroachment can remain. However, if the private encroachment is a new construction project, the private encroachment would not be allowed.

Chair Altwal asked if the applicant has to obtain a Use Permit for the extra one foot of fence height.

Assistant Planner Sikela indicated that a condition of approval has been included requiring the applicant to obtain what is called an Administrative Use Permit in order to have the fence height approved by the City.

Chair Altwal asked if the applicant was penalized with a fine by the City for this project since it was non-permitted.

Director Gentry responded that the City did not fine the applicant but that the Contra Costa County Building Department would have extra fees since the project was constructed without permits.

Commissioner Gall asked if the applicant will have to take out an insurance policy to protect the City from liability implications as part of entering into an encroachment agreement with the City.

Commissioner Wolfe indicated he was in favor of project approval.

Chair Altwal asked if an additional a condition of approval can be included requiring the applicant to maintain adequate landscaping in the area of project that encroaches into the City's right-of-way.

Vice Chair Cloven indicated that requiring the applicant to maintain the right-of-way area of the project is setting a dangerous precedent requiring property owners Citywide to maintain right-of-way areas adjacent to their property.

Director Gentry indicated that the City does not have the resources to maintain these right-of-way areas that are adjacent to private property areas.

The public hearing was re-opened.

Mr. Kalt asked if the retaining wall was lowered to under three feet in height, thereby not needing a building permit, would that avoid having to enter into an encroachment agreement with the City and to secure insurance coverage protecting the City.

Director Gentry responded that it is the location of the retaining wall in the City's right-of-way, and not the height of the retaining wall, that is triggering the requirement for an encroachment agreement and insurance policy.

The public hearing was closed.

Vice Chair Cloven moved and Commissioner Gall seconded a motion to approve Site Plan Review Permit SPR-04-18, with the findings and conditions of approval recommended by staff. The motion passed 4-0.

6. OLD BUSINESS

None.

7. NEW BUSINESS

None.

8. COMMUNICATIONS

8.a. Staff

None.

8.b. Commission

None.

9. ADJOURNMENT

9.a. The meeting was adjourned at 7:53 p.m. to the regularly-scheduled meeting of the Planning Commission on November 27, 2018.



Submitted by
Mindy Gentry
Community Development Director



Approved by
Bassam Altwal
Chair