

**Minutes
City of Clayton Planning Commission
Special Meeting
Wednesday, January 11, 2023**

1. CALL TO ORDER

Chair Daniel Richardson called the meeting to order at 7:00 p.m.

2. PLEDGE OF ALLEGIANCE

Chair Richardson led the Pledge of Allegiance.

3. ROLL CALL

Present: Chair Daniel Richardson
 Vice Chair Richard Enea
 Commissioner Justin Cesarin
 Commissioner Maria Shulman
 Commissioner Ed Miller

Planning Commission Secretary/Community Development Director Dana Ayers and Assistant Planner Milan Sikela were present from City staff.

4. PRESENTATIONS

There were no presentations.

5. ACCEPTANCE OF THE AGENDA

There were no changes to the agenda as submitted.

6. PUBLIC COMMENT

There were no public comments on any item not on the agenda.

7. CONSENT CALENDAR

A. Minutes of Planning Commission Meeting of December 13, 2022.

There being no member of the public attending in person or virtually who wished to comment on the Consent Calendar, Chair Richardson invited a motion.

Vice Chair Enea moved to adopt the Consent Calendar with Minutes of the December 13, 2022 meeting, as submitted. Commissioner Miller seconded the motion. The motion passed by vote of 5 to 0.

8. PUBLIC HEARING

A. **Roadside 22 Beer and Wine Bar Use Permit (UP-02-2022).**

This is a public hearing is to consider a request by Nichole Simpson for approval of a Use Permit (UP-02-2022) to allow the operation of a beer and wine bar in an existing tenant space in the Clayton Station shopping center. The business is proposed to include a parklet (outdoor area) to be located in the existing parking spaces directly in front of the tenant space. The business is proposed to be located at 5439 Clayton Road in Suite E and F (Assessor's Parcel No. 118-031-052) and to operate Wednesday through Sunday at the following times: Wednesday, 4:00 p.m. to 9:00 p.m.; Thursday, 4:00 p.m. to 9:00 p.m.; Friday, 4:00 p.m. to 10:00 p.m.; Saturday, 12:00 p.m. to 10:00 p.m.; and Sunday, 8:00 a.m. to 3:00 p.m.

Environmental Determination: This project is categorically exempt from the California Environmental Quality Act (CEQA, Public Resources Code section 21000 *et seq.*), pursuant to section 15301 (Class 1, Existing Facilities) of the State CEQA Guidelines (California Code of Regulations, Title 14, section 15000 *et seq.*)

Assistant Planner Sikela presented the item and shared a slide deck summarizing the staff report.

Chair Richardson invited questions comments from Commissioners. No Commissioners had any questions.

Chair Richardson opened the public hearing and invited the applicant to speak.

Nichole Simpson thanked City staff, and particularly Assistant Planner Sikela, for their patience and thoroughness in the processing of her application. She said she introduced herself as a Concord native who currently resided with her family in Concord near Clayton, and she described her activities in the community and in her children's schools. She said she was a graduate of St. Mary's College and has worked for many small businesses, and that she currently owned an event planning business and co-owned a vintage mobile bar business. She described her goal to establish a business in Clayton that joined community and small businesses. She wanted the business to have a bistro or café setting, with no late hours or hard alcohol, that felt high-end without feeling pretentious, and that was a welcoming environment to everyone. She wanted the business to feature well-known beers and wines as well as product from local breweries and wineries, and to partner with and support other local

small businesses. She said she has done extensive research into business operations, costs, planning, permitting requirements and building of the business. She re-iterated that she wanted to be respectful of the community and did not want the business to be a rowdy operation but rather a special gathering place for the community.

Wendi Laughlin identified herself as a resident of Clayton. She said she had known Nichole Simpson for almost 30 years. Ms. Laughlin, along with local realtor Kelly Scholes, had written letters in support of the use permit. She said that Ms. Simpson takes the community to heart and wanted to offer jobs, a fair work environment, and a safe place for people to gather. She said that there were not a lot of places like the one Ms. Simpson was proposing, and that while Ms. Laughlin and her family frequented the local restaurants in the City, she was looking forward to having another option for hosting community and other special events.

Jeannine Owens, a 911 dispatcher, Kirkwood resident and parent of a student of Pine Hollow Middle School, had met the applicant when their children attended Ayers Elementary School. As a resident of Kirkwood, Ms. Owens patronized the businesses in the Clayton Station Shopping Center, where she observed a homeless population. Ms. Owens supported the proposal and believed that populating the tenant space into the evening hours would be beneficial, and with business operations growing by word of mouth, anticipated that many of the business' patrons would be first responders and parents.

Kristin Wenger, a teacher at Ayers Elementary School, had met the applicant when Ms. Simpson's son was a student in Ms. Wenger's classroom. Ms. Wenger shared that Ms. Simpson worked hard for others and for the community, was a committed volunteer at Ayers Elementary and Pine Hollow Middle schools, and helped to build relationships that have continued to benefit the communities there. Ms. Wenger supported the proposal and asked the Commission to approve the permit request.

There being no one else in attendance in person or virtually who wished to speak, Chair Richardson invited Commissioners to ask questions of the applicant.

In response to Vice Chair Enea, Ms. Simpson said she chose the business name "Roadside 22" because the proposed business location was in Clayton Station Shopping Center on the Clayton Road side, and she had started planning the business at this location in 2022. Also in response to Vice Chair Enea, she said that the business would not be a rowdy sports bar but that there would be some televisions in the space.

Commissioner Miller disclosed that his wife and the applicant were both members of the Parent-Teacher Association at their children's school. He

noted that the only concern he read in the agenda packet was about sound, and he noted further that the applicant had expressed intent not to have live music and that there was a soundwall nearby. He was glad that she was interested in occupying the vacant tenant space, as vacant properties could be potential attractions for bad things.

Commissioner Cesarin asked if a permit would be necessary for any live entertainment. Director Ayers advised that, if the Commission decided to approve the use permit, it would be approved as the use was described. In this instance, the applicant had stated that there would not be any live entertainment. Director Ayers advised that should the Commission approve the use permit, and depending on the desired direction for how to handle introduction of live entertainment, the draft resolution attached to the staff report could be revised to either: a) add a condition explicitly allowing live entertainment subject to certain restrictions; or b) in draft Condition No. 4, which listed the circumstances that would trigger a use permit amendment, include addition of live entertainment as an expansion of the use requiring a new review of the use permit by the Planning Commission.

Commissioner Cesarin then asked the applicant if she would like to have live entertainment, to which the applicant said she would like the option to introduce small-scale or acoustic live entertainment in the future. In response to Commissioner Cesarin, Ms. Simpson said she hoped to open the business within three to six months, and that the parklet was not designed yet. Commissioner Cesarin suggested televisions would be a good addition to the business and could be used to display art when not used for watching games or customer requests.

Commissioner Shulman asked if the parklet would be permanent or removable. Ms. Simpson said that she envisioned the parklet to be permanent, built with composite decking, level with the curb and enclosed by a short fence. Further in response to Commissioner Shulman, Ms. Simpson said she did not envision that the parklet would be used much on rainy days and did not plan to build a permanent cover but might consider occasionally enclosing it in a tent similar to those used for weddings. Commissioner Shulman expressed concern about potential theft and vandalism due to the homeless population and asked if the parklet furniture would be locked down at the end of the day, to which Ms. Simpson said that the furniture would be brought inside the building after hours. Commissioner Shulman confirmed with the applicant that she was aware of the requirements for accessibility for persons with disabilities.

Chair Richardson said, and the applicant agreed, that even the best plans would need to be adaptable after the business had been in operation for some time. He otherwise thought the proposal was a terrific idea, and referenced other similar businesses in the area that also seemed to be nimble and flexible in their operations.

There being no one else in attendance in person or virtually who wished to speak, Chair Richardson closed the public hearing and invited discussion among Commissioners.

Commissioner Miller wanted new businesses to succeed and wanted to make sure that the Commission's action balanced concerns expressed about noise with the ability for the applicant to have flexibility in her business operations. He was comfortable with a condition allowing non-amplified sound in compliance with local ordinances. He said that a beverage establishment with a "talkable volume" would be a welcome addition to the local business community.

Commissioner Shulman agreed with Commissioner Miller's comment about acoustic and non-amplified music creating a comfortable and talkable atmosphere, and allowing the applicant some flexibility in that regard. She noted that she had forgotten to ask the applicant about food but hoped that there would be some food service with the business. She said the business would be a welcome addition, and that it would be nice to see businesses instead of empty storefronts. She felt that the more businesses there were in the community to keep the community together, the better.

Commissioner Cesarin asked staff if there was a need to add any language to the resolution regarding live entertainment, and he pointed to a draft finding in the draft resolution indicating that the use would not violate the General Plan Noise Element. Director Ayers confirmed that there were ordinances of the City that regulated noise, and that any activity would need to comply with those regulations. Still, she suggested that a condition to the resolution specifically allowing live entertainment within bounds of City ordinances for noise might be a good idea to avoid interpretation by future City staff about whether live entertainment was allowed at the business. Assistant Planner Sikela noted that the business as described in the staff report indicated that live entertainment at the business was not proposed. He also recognized that a single guitar with a small amplifier could be quieter than acoustic performers, such as a mariachi band. Commissioner Cesarin suggested that a condition of approval be added that allowed the business to have live entertainment, but without specific prohibition on amplified sound, as long as the live entertainment complied with City noise standards.

Vice Chair Enea said he was looking forward to visiting the business. He agreed with the comments expressed by Commissioners Miller and Cesarin about giving allowance for live entertainment subject to compliance with the City's noise standards.

In response to Chair Richardson, Director Ayers explained that the process to amend an approved use permit was the same as the process to approve

a new use permit, and that the process involved a new application, payment of fees, and a public hearing before the Planning Commission. She noted that draft Condition No. 4 described the circumstances under which an amendment to the use permit would be required. Chair Richardson did not want to add more cost to the business to make changes in the future. He agreed with comments made by other Commissioners about giving an allowance for live entertainment subject to noise level and time limitations of the City's regulations. He confirmed with staff that the City's noise standards allowed higher noise levels until 10:00 p.m. and noted that the applicant's proposal did not include operational hours beyond that hour. He otherwise supported the use in the vacant tenant space, and shared an anecdote about a project he had worked on for another agency, where the agency placed a park next to a site where bad behaviors had been observed. He noted that, with the arrival of children and parents to the park, the bad behaviors and vandalism in the area stopped. He believed that introducing a lively business to the shopping center would be similarly beneficial.

Commissioner Cesarin asked about special events that might occur at the business. Assistant Planner Sikela said that events that would occur during regular business hours would not require any special permitting, but that larger events or other events outside of business hours might require a temporary use permit and/or noise permit, subject to a flat fee for processing. Director Ayers added that temporary use permits could not be issued more than four times a year for a specific site.

Commissioner Miller made a motion to adopt the Resolution attached to the staff report, with added language allowing the business to have live entertainment in compliance with the City's noise standards. Vice Chair Enea seconded the motion.

Chair Richardson invited further discussion on the motion. There being no further comments from Commissioners, Chair Richardson called for the vote on the motion. The motion passed by vote of 5 to 0.

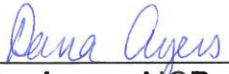
9. COMMUNICATIONS

Commissioner Miller requested that the City Attorney provide the Commission with an update on new relevant land use legislation. Vice Chair Enea was concerned about the cost for the City Attorney to make the presentation. Director Ayers suggested that she could check with the City Attorney about whether the City Attorney's office produced a summary of notable legislation. Chair Richardson noted that the League of California Cities typically produced a comprehensive legislative summary at the beginning of the calendar year.

10. ADJOURNMENT


The meeting was adjourned at 7:57 p.m. to the next regular meeting of the Planning Commission on January 24, 2023.

Respectfully submitted:



Dana Ayers, AICP, Secretary

Approved by the Clayton Planning Commission:



Daniel Richardson, Chair