

Minutes
Clayton Planning Commission Meeting
Tuesday, August 14, 2018

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

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

Present: Chair Carl Wolfe
 Vice Chair Bassam Altwal
 Commissioner A. J. Chippero
 Commissioner Peter Cloven
 Commissioner William Gall

Absent: None

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

2. ADMINISTRATIVE

2.a. Selection of Chair and Vice Chair.

Commissioner Cloven moved and Commissioner Chippero seconded a motion to select Vice Chair Altwal as Chair. The motion passed 5-0.

Chair Altwal moved and Commissioner Chippero seconded a motion to select Commissioner Cloven as Vice Chair. The motion passed 5-0.

2.b. Review of agenda items.

2.c. Declaration of Conflict of Interest.

2.d. Vice Chair Cloven to report at the City Council meeting of August 21, 2018.

3. PUBLIC COMMENT

John Kranci, 3001 Coyote Circle, indicated he was opposed to allowing parole homes in Clayton and asked that, even though the Parolee Housing Ordinance was being reviewed by the City Council, would the Planning Commission be revisiting the Parolee Homes Ordinance.

Chair Altwal responded that the Planning Commission had already made a recommendation to the City Council regarding the Parolee Housing Ordinance and would not be revisiting the item.

Marci Longchamps, 3001 Coyote Circle, indicated she was concerned with the support the City Council expressed and amendments the City Council provided for the Parolee Housing Ordinance at the introduction and first reading of the Parolee Housing Ordinance at the City Council meeting of July 17, 2018 and indicated she was strongly opposed to allowing parolee homes in Clayton.

Vice Chair Cloven responded that he wished to acknowledge the strong opinion and public involvement regarding the Parolee Housing Ordinance and confirmed that the Parolee Housing Ordinance would not come back before the Planning Commission for further review.

Chair Atlwal indicated that the City Council makes its own decision regarding the Planning Commission's recommendation.

Commissioner Gall indicated that the Planning Commission is a consultative body to the City Council and the City Council does not have to follow the Planning Commission's recommendation.

Commissioner Wolfe indicated that the City Council also has a public comment period at their meetings.

Jim Gamble, 202 Prospector Place, expressed concerns that the scope of the proposed High Street Townhomes project is growing in structural height, number of units, and potential slope impacts and had the following questions:

- How many times can the proposal be changed? Director Gentry indicated that the proposal can be changed as many times as the developer wishes to change it.
- Is the High Street Townhomes project scheduled to be reviewed by the Planning Commission? Director Gentry indicated that the project is still being reviewed at the staff level and is not currently scheduled to be reviewed by the Planning Commission.
- What is the timeline for Planning Commission review of the project? Director Gentry indicated that, at this time, staff is reviewing additional information and, once the project is formally scheduled for a public hearing before the Planning Commission, the project will be noticed accordingly.

4. MINUTES

- 4.a. Approval of the minutes for the June 26, 2018 Planning Commission meeting.

Commissioner Wolfe moved and Vice Chair Cloven seconded a motion to approve the minutes, as submitted. The motion passed 5-0.

5. PUBLIC HEARINGS

- 5.a. **SPR-03-18, CDD-04-18, Site Plan Review Permit and Reasonable Accommodation Request, Jeff Daley, 229 El Pueblo Place, APN: 119-600-006.** A request for approval of a Site Plan Review Permit to allow the construction of a rear yard deck, with an accessible ramp, measuring approximately 770 square feet in area and a total of 12.83 feet in height, and a Reasonable Accommodation request to allow an accessible ramp to project into the required ten-foot interior right (north) side setback on an existing split-level two-story single-family residence.

Assistant Planner Sikela presented the staff report.

Commissioner Wolfe had the following questions:

- Will the deck encroach into the side yard setback? Assistant Planner Sikela indicated that only the ramp will encroach into the side yard setback and the transitional segment between the ramp and deck would encroach but then the deck will taper away from the side property line in order to be more compliant with the required ten-foot side yard setback.
- Is the design of the project before us tonight the design that the Planning Commission will make a decision on? Assistant Planner Sikela responded "Yes."
- Will the footings on the deck be skirted or visible? Assistant Planner Sikela indicated that, based on applicant input, the footings would be skirted.
- Excellent presentation that answered many of my questions. Assistant Planner Sikela thanked Commissioner Wolfe for his compliment.

Vice Chair Cloven asked, if the stone dust path leading from the sidewalk to the ramp is an impermanent, permeable surface that can be re-located, then why are we including a condition requiring an encroachment permit for any work done in the City's right-of-way? Assistant Planner responded that staff always proposes the condition requiring an encroachment permit as part of any construction-related project in order to protect the City's right-of-way through the encroachment permit process which is overseen by the City Engineer.

Commissioner Gall had the following questions and comment:

- How tall is the fence of the north (right) side of the subject property? Assistant Planner Sikela indicated that staff did not measure the fence height but the fence appeared to be a standard good neighbor fence that would be approximately six feet in height.
- Does the ramp and deck exceed the north (right) side fence height? Assistant Planner Sikela indicated that the ramp does not exceed the fence height but the rear portion of the deck would be higher than the fence since the fence follows the downward slope that exists in both the subject property and neighboring property.
- What is the required rear setback for the subject property? Assistant Planner Sikela responded that the required rear setback is 15 feet.
- Did the neighbors contact staff? Assistant Planner Sikela indicated that staff has been contacted by the neighbors who came to City Hall to review the project information.
- It is good that we are requiring trees along the north (right) side fence in order to provide additional screening. Assistant Planner Sikela indicated that there is a stand of thick trees along the rear property line of the subject property and staff's intent was to have the screening provided by newly-planted trees, which would wrap around and run along the fence on the north (right) side property line.

Commissioner Chippero had the following questions:

- The additional trees being required to be planted along the north (right) side property line are 15-gallon in size? Director Gentry indicated that was correct.
- Are there a specific number of trees that would have to be planted? Director Gentry indicated, once the applicant decides what types of trees they would like to plant, staff can require larger trees such as 24-inch box if there is a shortfall of screening caused by the number or size of the newly-planted trees.

Vice Chair Cloven asked what is the height of the rear fence on the subject property? Assistant Planner Sikela indicated that staff did not measure the fence height but the fence appeared to be a standard good neighbor fence that would be approximately six feet in height.

Chair Altwal indicated that his occupation involves accessibility issues and had the following question and comments:

- Is the subject residence being used for a business? Assistant Planner Sikela indicated he was not aware of a business being operated from the subject residence but he would defer to the applicant to provide that information.
- The minimum area requirement for the landing for the ramp is five feet, not four feet.
- The minimum height of the safety railing can be up to 38 inches in height.
- For safety reasons, a wheel guide should be included on the outer edge of the ramp and deck.

Director Gentry indicated that all of the construction-related thresholds and dimensions will be reviewed for compliance with Americans with Disabilities Act (ADA) and Title 24 requirements by the Contra Costa County Conservation and Development Department once a building permit is applied for to construct the project.

The public hearing was opened.

Jeff Daley, the applicant, described the topography of the subject property as related to the existing fencing, proposed ramp, and proposed deck as well as providing the following comments:

- We want to extend the ramp and deck as far as possible in order to allow my brother, Larry Brennan, the maximum amount of space to increase his enjoyment of the subject property.
- As staff indicated, there are existing trees on the rear and we are in support of planting additional trees along the north (right) side property line in order to address privacy impacts.

Chair Altwal had the following questions:

- Is topography of the rear yard of the neighboring property to the north similar to the topography of the rear yard of the subject property? The applicant answered "Yes."
- If you are standing on the northwest (right rear) corner of the deck, how much of the neighboring property's back yard can you see? The applicant said that you can see the rear portion of the neighboring property's back yard from the northwest (right rear) corner of the deck.

Commissioner Wolfe asked why is deck being proposed at 770 square feet in area? The applicant responded that, due to the steep downslope in the rear yard, the rear yard is completely unusable for my brother so, as a result, we wanted to maximize my brother's enjoyment and use of the rear yard by having a large deck.

The applicant explained his understanding of the ADA requirements and State-mandated reasonable accommodation procedures and how these requirements and procedures related to land use activities, zoning activities, discretionary review processes, and confidentiality for the person with disability.

The applicant's brother, Larry Brennan, indicated the following:

- The goal of the reasonable accommodation request is provide a person with a disability to have equal enjoyment of both the inside and outside of the subject residence.
- To answer your question about a business being operated from the subject residence, I work online for a company in Boston, where I am from, but no clients come to the subject residence.
- I spend the majority of my day in my room and do not have access to water or other kitchen facilities.
- The construction of the ramp on the north (right) side of the subject property would allow me to have access to the kitchen and other living areas of the subject residence as well as spend time with my family.
- We have looked at every alternative and to have a ramp around the south (left) side of the subject residence would be problematic since, given the split-level design of the subject residence, the living areas of the residence are at a higher elevation than the southern (left) exterior areas of the subject property.

Katy Daley, the applicant's wife, indicated the following:

- The person with disability, Larry Brennan, is my brother.
- Mr. Brennan has been president and chair of the Spinal Cord Injury Association.
- Discussing these intimate details around Mr. Brennan's injury has been very painful.
- Our neighbors talk about privacy for the property, yet Mr. Brennan's life details have been exposed in a public forum as part of this process.
- Regarding privacy, from the windows of our home, we can see neighboring properties around us, which allows occupants of these neighboring properties to look into the windows of our home, and is an impact upon our privacy.
- A person with a disability being able to access their home and have use of their yard is a greater necessity than the aesthetic concerns involved with the construction of a deck.
- Regarding aesthetics, we are designing a beautiful ramp and deck that will be integrated with the subject residence.
- Until you live with a disability, you have no idea what it is like.
- This is a matter of family and community values and we encourage the Planning Commission to approve our reasonable recommendation request.

Robert Brennan, father of Mr. Brennan, indicated he was available to answer questions but did not have any comments at this time.

Cheryl Johnson, 233 El Pueblo Place, read aloud an email the prospective buyer of her residence sent to her, discussed some observations of how the project appears from her property, and indicated the following:

- I live next door (and north of) the subject property.
- I am a teacher at Diablo View Middle School.
- As a teacher, I accommodate students with disabilities.
- We have to find the best way to accommodate a person with disabilities.
- At Diablo View Middle School, we try to make sure that the accommodation does not adversely affect the students around them to the degree that these students cannot learn.
- My heart goes out to the applicant's family and their confidentiality preferences.

- I have concerns that the proposed location of the ramp will expose Mr. Brennan to the elements.
- I think the applicant should take a look at other design alternatives in order to provide Mr. Brennan with a better route for accessibility purposes as well as to minimize visual impacts to surrounding properties.
- In my review of guidelines provided on the HUD.gov website, the guidelines indicated that, in most cases, ADA requirements do not apply to residential housing but, rather, apply to places of public accommodations such as restaurants, retail stores, libraries, and as well as commercial facilities such as office buildings, warehouses, and factories.
- I am opposed to the project as currently proposed.

Betty Lou Moglen indicated that she is in support of Planning Commission approval of the project.

Mr. Brennan explained his understanding of ADA-related construction thresholds and dimensions and indicated that an access ramp leading to the front door would create a larger visual impact for the entire neighborhood.

The public hearing was closed.

Commissioner Wolfe indicated the following:

- I think there are better design alternatives.
- I am concerned that the applicant's family spoke to the neighbors about the project, and those neighbors appear to have been in support of the project, and then, after the neighbors appeared to have been in support of the project, they complained about the project.
- Construction of the deck would improve accessibility to and enjoyment of the rear yard given the steep downward slope in the rear yard.
- I am in support of conditional approval of the project.

Commissioner Chippero indicated that he can appreciate the level of difficulty involved with amending the ramp and deck design to be more compliant with setback requirements.

Director Gentry indicated that this project came before the City because we received a complaint regarding the construction of the deck not being permitted.

Assistant Planner Sikela indicated that he spoke with the Contra Costa County Conservation and Development Department and County staff confirmed that they would review the deck for compliance with all applicable ADA and California Building Code regulations.

Vice Chair Cloven indicated the following:

- I support the planting of trees to provide additional screening for the project.
- I support conditional approval of the project.

Chair Altwal reiterated his level of expertise as related to structural compliance for accessibility purposes and discussed various possible minor dimensional changes to bring the project in greater compliance with applicable setback requirements, specifically reducing the encroachment of the deck into the north (right) side setback so that, instead of being five feet four inches from the north (right) side property line, it would be nine feet one inch from the north (side) property line. He added that, according to applicable accessibility regulations, the improvements related to the reasonable accommodation would have to be removed and the residence returned to pre-existing conditions if Mr. Brennan moves out of the subject residence.

Commissioner Wolfe indicated that he is very pleased with the balance that has been struck as part of the compromise and is in support of conditional approval of the project.

Assistant Planner Sikela confirmed staff's understanding that conditions will be added by the Planning Commission as follows:

- The accessible ramp shall be a maximum of three feet in width;
- The deck shall be reduced in area so that the line of the north (right) side of the deck is consistent with the north (right) side of the ramp; and
- Skirting shall be constructed around the outside edge of the deck from finished grade to the deck floor.

The Planning Commission concurred that staff was correct in its understanding of the conditions that will be added.

The public hearing was re-opened.

Chair Altwal asked if the people in opposition to the project were satisfied with the outcome of the Planning Commission's modifications.

Ms. Johnson indicated she still has concerns with the height of the deck but was satisfied with the overall solution.

The public hearing was closed.

Commissioner Wolfe moved and Vice Chair Cloven seconded a motion to approve Site Plan Review Permit (SPR-03-18) to allow the construction of a rear yard deck, with an accessible ramp, on an existing split-level two-story single-family residence and a Reasonable Accommodation request (CDD-04-18) to allow an accessible ramp to extend into the required ten-foot interior north (right) side setback at 229 El Pueblo Place (APN: 119-600-006) with the findings and conditions recommended by staff and the conditions amended and added by the Planning Commission. The motion passed 5-0.

6. OLD BUSINESS

None.

7. NEW BUSINESS

None.

8. COMMUNICATIONS

8.a. Staff.

8.b. Commission.

9. ADJOURNMENT

9.a. The meeting was adjourned at 9:15 p.m. to the regularly-scheduled meeting of the Planning Commission on August 28, 2018.



Submitted by
Mindy Gentry
Community Development Director



Approved by
Bassam Altwal
Chair