

**Minutes**  
**Clayton Planning Commission Meeting**  
**Tuesday, May 22, 2012**

**Call to Order**

Chair Dan Richardson called the meeting to order at 7:00 p.m. at Hoyer Hall, 6125 Clayton Road, Clayton.

Present: Chair Dan Richardson, Commissioner Bob Armstrong, Commissioner Sandra Johnson, and Commissioner Gregg Manning

Absent: Vice Chair Haydon

Staff: Community Development Director David Woltering  
Assistant Planner Milan Sikela, Jr.

**Administrative**

1A. Review of agenda items.

1B. Commissioner Johnson to report at the City Council meeting on June 5, 2012.

**Public Comment**

None.

**Approval of Minutes**

2. Approval of minutes from the meeting of May 8, 2012.

**Commissioner Manning moved and Commissioner Armstrong seconded a motion to approve the minutes, as submitted. The motion passed 4-0.**

Vice Chair Haydon arrived to the meeting at 7:04 p.m.

**Public Hearing**

3. **HOP 05-12, Home Occupation Permit, Debra Marion, 50 Mt. Olympus Place, APN 119-212-034.** A request for a Home Occupation Permit to consider allowing a permanent cosmetic business to operate in a single-family residence.

Assistant Planner Sikela presented the staff report and indicated that staff was proposing an additional advisory note informing the applicant that she needed to review any applicable covenants, conditions, and restrictions (CC&Rs) of the subdivision in which her home is located to assure the proposed home business would conform with those requirements.

Commissioner Armstrong referred to Proposed Condition of Approval 2 (which allowed the maximum number of clients to be two per day) and asked if, in the instance that the level of business would necessitate an increase in the total number of clients allowed per day, could staff approve an increase administratively. *Director Woltering indicated that staff could not administratively approve an increase in the maximum number of client visits. The applicant would have to return to the Planning Commission in order to increase the maximum number of client visits. Assistant Planner Sikela added the Commission could consider at this time a somewhat higher number of client visits, while staying within the Code maximum of six client visits per day.*

Commissioner Manning indicated that, in the written supplement provided by the applicant, it was indicated that the applicant requested having one free consultation in addition to the two client visits per day. Can we amend Proposed Condition of Approval 2 in order to allow an additional free consultation? *Director Woltering indicated that the maximum number of clients visit could be amended by the Commission to include consultations.*

Vice Chair Haydon indicated that Proposed Condition of Approval 4 should be amended to specify that the business would operate “only” the last ten days of the month “from 10:00 a.m. to 5:00 p.m.”, excluding Sundays.

Chair Richardson asked, if approved, would the Home Occupation Permit run in perpetuity? *Assistant Planner Sikela indicated that, if the approved parameters and scope of the home occupation did not change, and the home occupation was conducted from the subject residence and was not relocated, then the Home Occupation Permit would run in perpetuity.*

The public hearing was opened.

The applicant, Debra Marion, distributed additional information regarding her proposed home occupation request, summarized the scope of her permanent cosmetic business, listed her qualifications and experience, and indicated the following:

- My husband and I moved into the subject residence in 1973.
- I am in town the last ten days of each month to care for my husband, Joseph Marion, and provide help in the home which includes cleaning, fixing meals, and looking after the grandchildren.
- In the past, my husband and I were very involved in community events and owned the ice cream store in the Town Center. Our children and grandchildren are still involved with the community, teaching at and attending local schools.
- I volunteer my time to support breast cancer survivors and caregivers.
- I am requesting this entitlement in order to bring in more income and to help my family.
- Prefer to have a maximum of three client visits per day and operating hours from 10:00 a.m. to 6:00 p.m.
- Permanent cosmetics provides a much-needed service in our community that is restorative and beautifying. It is important for older women and breast cancer survivors to feel good about themselves, and my services fulfill that need.
- The subject residence is handicap accessible with ramps already installed.
- The “softap” needles I use are the newest technologically advanced version of needles available and are easily disposable and prevent cross-contamination.
- Permanent cosmetics are merely one artistic service in my repertoire; I also paint porcelain China dolls, am a juried artist, and have worked with lace.

Commissioner Johnson had the following comments and questions:

- I noticed that the example release agreement (identified as Attachment 5 in the staff report) lists your business address in Washington, with the Washington address crossed out and the Clayton address hand-written in. In addition, the release agreement states that the releasor must be at least 18 years of age which conflicts with the staff-proposed Condition of Approval requiring clients to be 21 years of age. *The applicant indicated that the release agreement forms used for her business in Clayton would be amended to reflect the correct address and required age minimum.*

- Would you be providing other art services at the subject residence, such as China doll painting? *The applicant indicated that no other artist business would be conducted at the subject residence.*

Vice Chair Haydon had the following questions:

- Do you conduct the same type of business in Washington? *The applicant answered "Yes."*
- How long have you been providing permanent cosmetic services? *The applicant indicated that she has been providing permanent cosmetic services since 2009.*

Commissioner Manning had the following questions:

- Is the permanent cosmetic business in Washington conducted out of a residence? *The applicant responded no, the business in Washington is conducted out of a salon.*
- Is the business in Washington doing well? *The applicant indicated that the business in Washington was doing well, but that her husband was partially disabled, and her family needed the additional income. She added that she wanted to be closer to her children and grandchildren.*

Chair Richardson had the following questions:

- Did you notify your neighbors? *The applicant indicated she did not notify the neighbors since she understood that staff would be mailing out public hearing notices to the neighboring properties.*
- Do you agree to abide by the Proposed Conditions of Approval? *The applicant answered "Yes."*

Stan Zukowski, 40 Mt. Olympus Place, indicated the following:

- Objects to the Home Occupation Permit being approved.
- Since we live in a cul-de-sac, the permanent cosmetic business may cause parking impacts.
- Concerned about the applicant's grandchildren getting into the room where the home occupation will be conducted.
- If we were to sell our home, we would have to disclose that a permanent cosmetic business was being operated in the adjacent residence, which could make our property value go down.

Husband of the applicant, Joseph Marion, indicated the following:

- I contacted the neighbors about the proposed home occupation and there were no objections.
- The Zukowskis were out of town when I attempted to contact them.

Daughter of the applicant, Monique O'Sullivan, indicated the following:

- I am a teacher at various local schools and am working toward a teaching credential.
- My younger children live with their father but are often at the subject residence with me and the grandparents (applicant and applicant's husband).
- My younger children are 11 and 13.
- My older son, who is 19, lives at the subject residence.
- There would be no danger to the children caused by the conduct of the home occupation.

Jane Zukowski, 40 Mt. Olympus Place, indicated that she had concerns with the parking impacts that may be caused by clients visiting the subject residence.

The public hearing was closed.

Chair Richardson asked if staff had been contacted by any of the other neighbors that were not in attendance at tonight's meeting. *Assistant Planner Sikela indicated that no neighbors had contacted staff.*

Commissioner Armstrong indicated that the proposal was straightforward and, as conditioned, was in support of approving the Home Occupation Permit.

Commissioner Johnson indicated that, according to the photographs of the cul-de-sac where the subject residence is located, the parking is far less problematic than in her neighborhood and did not see parking at the subject residence as an issue. As conditioned, she was in support of approving the Home Occupation Permit.

Vice Chair Haydon indicated the following:

- As conditioned, and with the new wording he provided to amend Condition of Approval 4, he supports approving the Home Occupation Permit.
- The parking concerns raised will be minimal since only one client at a time will be at the subject residence.
- Was initially concerned about the children on-site but, because they are older, I have no concerns.
- As described and demonstrated, it appears the equipment proposed for use does not pose a safety threat.

Commissioner Manning indicated the following:

- We could amend Proposed Condition of Approval 2 to allow for one free consultation and two treatments per day. *Director Woltering indicated that differentiating between free consultations and actual treatments would be difficult, if not impossible, to track and enforce. Since the Clayton Municipal Code identifies the number of visits rather than the nature of the visits, it would be more appropriate to increase the number of allowed client visits per day from two to three.*
- He does not see a problem with the proposed use and supports approving the Home Occupation Permit, as conditioned, and to allow up to three client visits on the allowed days.

Chair Richardson indicated the following:

- His question regarding informing the neighbors about the home occupation proposal was asked in order to emphasize the importance of good communication between property owners and occupants within a neighborhood.
- It is always advisable to go around to your neighbors in the spirit of good will to obtain feedback from your neighbors.
- If approved, the conditions will address areas of concern.

Director Woltering indicated that Mr. and Mrs. Zukowski came to City Hall to discuss with him concerns regarding the Home Occupation Permit.

**Commissioner Johnson moved and Commissioner Manning seconded the motion to approve Home Occupation Permit HOP 05-12 for the permanent cosmetic business at 50 Mt. Olympus Place, subject to the Findings of Approval, Conditions of Approval, and Advisory Notes recommended by staff, and subject to the following Conditions of Approval amended by the Planning Commission and following Advisory Notes added by staff:**

Conditions of Approval (amended)

2. A maximum of ~~two (2)~~ three (3) clients per day are allowed.
4. The business shall operate only during the last ten (10) days of each month from 10:00 a.m. to 5:00 p.m., excluding Sundays.

Advisory Notes (added)

1. Prior to commencing the home occupation, the applicant shall obtain a business license from Code Enforcement Officer Rita Howe, 6000 Heritage Trail, Clayton, 925-673-7310.
2. If the project site is located within an area subject to covenants, conditions, and restrictions (CC&R's) administered by a homeowners' association, additional requirements and/or approvals may be required by the homeowners' association. Before proceeding with the project, it is advisable to check with the homeowners' association to ensure any applicable requirements are met.

**The motion passed 5-0.**

**Old Business**

4. None.

**New Business**

5. None.

**Communications**

- 6A. Staff.

Community Development Director Woltering indicated that staff has been in contact with the environmental consultant for the Clayton Community Church project, LSA Associates, who have provided a revised schedule for the Environmental Impact Report (EIR) preparation with an anticipated release date of early October 2012 for the public review Final EIR.

- 6B. Commission.

Commissioner Armstrong mentioned that there had been discussion at a recent TRANSPAC meeting involving the claim that trees that absorbed carbon monoxide during their lifespan and would release the carbon monoxide back into the air once they were cut down. Accordingly, there was considerable discussion about the negative impacts of trees.

Chair Richardson indicated that trees are beneficial overall to the community.

Commissioner Johnson indicated that she had concerns, based on a neighbor's complaint, that trees are sometimes inappropriately selected and installed in a manner that has an adverse impact on neighboring properties' solar rights by growing to a height that blocks solar collectors from sunshine.

Commission consensus on the issue was as follows:

- The City need not duplicate State laws regarding solar rights. Since the State law already address solar rights issues, it would be a civil matter between property owners.
- Would be useful to provide information to Clayton citizens regarding State laws that govern solar rights.
- Other cities that have enacted local ordinances to regulate solar rights include Berkeley, which is now stepping back from enforcement to allow violations to be handled through civil litigation.
- This issue should be placed on a future agenda for research and discussion purposes.

Director Woltering indicated the following:

- Issues for consideration include the City taking on the responsibility of enforcement when there are already State laws in place that address solar rights issues.
- The Solar Shade Control Act of 1979 was established by the State and includes, but is not limited to, regulating that trees should not shade more than ten percent of a solar collector between 10:00 a.m. and 2:00 p.m.

### Adjournment

7. The meeting was adjourned at 8:18 p.m. to the following regularly-scheduled meeting of June 12, 2012.



Submitted by  
David Woltering, AICP  
Community Development Director



Approved by  
Dan Richardson  
Chair

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