

THE CITY OF CLAYTON

Board of Aldermen  
Virtual Zoom Meeting  
July 28, 2020  
7:00 p.m.

Minutes

**NOTE: In accord with the provisions of Section 610.015, RSMo., and multiple declarations of emergency at every level of government, and the prohibition of large gatherings due to the Coronavirus pandemic, normal requirements for voting in the Board meeting were suspended. Accordingly, votes were taken as if all Board members were physically present and in attendance at the meeting.**

Mayor Harris called the meeting to order and requested a roll call. The following individuals were in attendance:

The following individuals were in attendance at the meeting by videoconferencing at all times unless otherwise noted.

Aldermen: Joanne Boulton, Rich Lintz, Ira Berkowitz, Bridget McAndrew, Susan Buse, Dan Sokol, and Mayor Michelle Harris

City Manager David Gipson  
City Attorney Kevin O'Keefe  
City Clerk June Frazier

The following members were absent: None

**Motion made by Alderman Berkowitz to approve the July 14, 2020 minutes. Alderman Lintz seconded.**

**Motion to approve the minutes passed unanimously on a voice vote.**

PUBLIC REQUESTS AND PETITIONS

None

A MOTION TO CONSIDER APPROVING A LIQUOR LICENSE FOR KATERINA'S, LLC DBA KATERINA'S GREEK KITCHEN LOCATED AT 7822 BONHOMME AVENUE

City Manager Gipson reported that Katerina's, LLC d.b.a. Katerina's Greek Kitchen is requesting a liquor license to sell all kinds of intoxicating liquor at retail by the drink, including Sundays, at 7822 Bonhomme Avenue.

The Police Department has completed its review of the application and supports the issuance of the requested license. The Planning and Development department has also approved the application with no objections.

The applicant has chosen not to submit a petition from surrounding property owners and first floor tenants. As a result, they are aware that this application must have a super majority vote of five Board members to be approved.

**Motion made by Alderman Boulton to approve a liquor license for Katerina's, LLC d/b/a Katerina's Greek Kitchen at 7822 Bonhomme Avenue. Alderman Lintz seconded.**

**The motion passed unanimously on a voice vote.**

**A MOTION TO CONSIDER APPROVING A LIQUOR LICENSE FOR 7676 FORSYTH, LLC DBA TONY'S AT 105 CARONDELET PLAZA**

City Manager Gipson reported that 7676 Forsyth, LLC d.b.a. Tony's is requesting a liquor license to sell all kinds of intoxicating liquor at retail by the drink, except Sundays, at 105 Carondelet Plaza.

The Police Department has completed its review of the application and supports the issuance of the requested license. The Planning and Development department has also approved the application with no objections.

The applicant has chosen not to submit a petition from surrounding property owners and first floor tenants. As a result, they are aware that this application must have a super majority vote of five Board members to be approved.

Tobias Raphael, James Bommarito and Jamie Mansfield, representing Tony's, were in attendance to answer questions.

Mr. Raphael reported that the completion of the construction would be around the end of September, but an opening date has not yet been determined due to the pandemic.

Mr. Raphael also inquired about the "jersey barriers" for outdoor dining more specifically at Pastaria Restaurant.

**Motion made by Alderman Boulton to approve a liquor license for 7676 Forsyth, LLC d/b/a Tony's at 105 Carondelet Plaza. Alderman Lintz seconded.**

**The motion passed unanimously on a voice vote.  
vote.**

**AN ORDINANCE TO CONSIDER AUTHORIZING A SMALL VEHICLE SHARING PROGRAM IN COOPERATION WITH OTHER MUNICIPALITIES**

City Manager Gipson reported that following the Board of Aldermen's discussion regarding small vehicle regulations on April 17, 2020, Staff reached out to the Cities of Brentwood, Maplewood, and Richmond Heights to request their consideration of incorporating Clayton into the Small Vehicle Share Program Intergovernmental Agreement. The three cities agreed that adding the City of Clayton would be beneficial to the partnership.

**Alderman Boulton introduced Bill No. 6802, authorizing a Small Vehicle Sharing Program in cooperation with other municipalities to be read for the first time by title only. Alderman Lintz seconded.**

**City Attorney O’Keefe reads Bill No. 6802, first reading, an Ordinance Authorizing a Small Vehicle Sharing Program in the City of Clayton, Missouri, in Cooperation with Other Municipalities and Approving a Fee Schedule in Connection Therewith by title only.**

**The motion passed unanimously on a voice vote.**

**Motion made by Alderman Boulton that the Board give unanimous consent to consideration for adoption of Bill No. 6802 on the day of its introduction. Alderman Lintz seconded.**

**The motion passed unanimously on a voice vote.**

**Alderman Boulton introduced Bill No. 6802, authorizing a Small Vehicle Sharing Program in cooperation with other municipalities to be read for the second time by title only. Alderman Lintz seconded.**

**City Attorney O’Keefe reads Bill No. 6802, second reading, an Ordinance Authorizing a Small Vehicle Sharing Program in the City of Clayton, Missouri, in Cooperation with Other Municipalities and Approving a Fee Schedule in Connection Therewith by title only.**

**The motion passed on a roll call vote: Alderman Boulton – Aye; Alderman Lintz – Aye; Alderman Berkowitz – Aye; Alderman McAndrew – Aye; Alderman Buse – Aye; Alderman Sokol – Aye; and Mayor Harris – Aye. The bill, having received majority approval was adopted and became Ordinance No. 6663 of the City of Clayton.**

**A MOTION TO APPOINT MEMBERS TO THE BOARDS AND COMMISSIONS**

City Manager Gipson reported that individuals have expressed interest in being appointed to or continuing to serve as a member of the following Boards or Commissions of the City. Mayor Harris has reviewed and agrees with the recommendations for appointment or reappointment to the respective Board or Commission and, therefore, submits the following nominations for the Board’s consideration.

**Board of Appeals**

Helen DiFate                      Ward 3 (new appointment completing a term through June 30, 2021)-  
*replaces B. McCooles*

**Board of Adjustment**

Abby Goldstein                      Ward 1 alternate (new appointment for 5-yr term through June 30, 2025)

**City Plan Commission/ARB**

Helen DiFate                      Ward 3 (reappointment for a 3-yr term through June 30, 2023)

**Community Equity Commission (CEC)**

Nicki Bissel                      Ward 2 (new appointment for a 3-yr term through June 30, 2023)-  
*replaces A. Sheble*

Stuart Berkowitz                      Ward 2 (reappointment for a 3-yr term through June 30, 2023)

**Economic Development Advisory Committee (EDAC)**

Bill Schute                      Ward 1 (reappointment for a 3-yr term through June 30, 2023)

Anthony Kirk	Ward 1 (new appointment completing a term through June 30, 2021)- <i>replaces E. Wang</i>
Ann Vasquez	Ward 2 (reappointment for a 3-yr term through June 30, 2023)
Jeff Yorg	Ward 2 (new appointment for 3-yr term through June 30, 2023)- <i>replaces C. Brennan</i>
Mary Corcoran	Ward 3 (new appointment for a 3-yr term through June 30, 2023)- <i>replaces R. Kerr</i>
Norton Hoffman	Ward 3 (reappointment for a 3-yr term through June 30, 2023)

**Parks & Recreation Commission (P&R)**

Missy McCormick	Ward 2 (reappointment for a 3-yr term through June 30, 2023)
Karen Berry Elbert	Ward 3 (new appointment for a 3-yr term through June 30, 2023)- <i>D. LaGesse</i>
Matt Durham	Ward 2 (new appointment for a 3-yr term through June 30, 2023)- <i>replaces E. Schneider</i>
Melanie Tamsky	Appointment as Chairman

**Public Art Advisory Committee (PAAC)**

Dwyer Brown	Ward 1 (reassigned to replace C. Colangelo, term expires 2021)
Jacob Reby	Ward 3 (reappointment for a 3-year term through June 30, 2023)

Mayor Harris noted that the Board will need to discuss appointing a chairman for the EDAC and also a replacement for Brian Edwards who has recently resigned due to residence relocation.

Alderman McAndrew requested that a letter is sent to those applicants not selected and that a deadline date is included next year when the City advertises for recruitment.

Alderman Buse noted that Nicki Bissel’s appointment to the CEC is for the seventh seat which is non-ward specific.

Alderman Boulton inquired about the PAAC alternate positions.

Mayor Harris stated that there will be a more structured “game plan” for recommendations next year.

**Motion made by Alderman Boulton to approve the appointments. Alderman Lintz seconded.**

**The motion passed unanimously on a voice vote.**

**FINDINGS - APPEAL OF THE ARCHITECTURAL REVIEW BOARD’S DECISION TO APPROVE A GARAGE ADDITION AT 747 MIDDLE POLO DRIVE**

City Attorney O’Keefe reported that the Board received a draft of the proposed findings and order for dispositions of the appeal involving the property of 747 Middle Polo Drive. In summary the proposed findings include a finding that the appellant has failed to establish that they have standing to bring the appeal and that they have not demonstrated that they are an aggrieved party within the meaning of the City’s ordinances by reasonable *suffering a demonstrable and material adverse effect* from the ruling complained of. The findings also nonetheless address the substance of the complaints filed by the appellant and finds that they lack merit across-the-

board accordingly. The proposed order is that the decision of the Plan Commission/Architectural Review Board be affirmed. (copy of Findings attached)

**Motion made by Alderman Boulton to accept the Findings. Alderman Lintz seconded.**

**The motion passed on a roll call vote: Alderman Boulton – Aye; Alderman Lintz – Aye; Alderman Berkowitz – Aye; Alderman McAndrew – Aye; Alderman Buse – Aye; Alderman Sokol – Aye; and Mayor Harris – Aye.**

City Attorney O’Keefe added that the City Clerk will distribute a copy of the Findings to the appellant and the property owners upon execution of the document.

#### Other

Alderman Boulton reported:

- Participated in a Forward Through Ferguson virtual meeting for elected officials; 20 participants.

Alderman Lintz reported:

- Plan Commission/ARB

Alderman Berkowitz inquired about the monument issue and the next steps. Mayor Harris provided a report stating that currently the Task Force includes herself, a representative from the Missouri History Museum, a representative from Washington University, a professor for African-American studies; and Katie Lerwick, Chair of History, Clayton Community Foundation; they are awaiting a designee from the CEC. The first meeting of the task force is scheduled for mid-August.

Alderman McAndrew reported:

- Clayton Community Foundation (CCF)

Alderman Buse reported that she also attended the Forward Through Ferguson virtual meeting.

Alderman Sokol reported:

- Sustainability Committee met last week discussed electric vehicles and charging stations.

Mayor Harris reported that there is a lot of wildlife at Oak Knoll Park that includes two groups of hatchlings (ducks); Kudos to the Parks & Recreation staff for keeping up the great work on the City’s parks.

**Motion made by Alderman Sokol that the Board adjourn to a closed meeting, with a closed vote and record, as authorized by Section 610.021(1), (2) and (3) Revised Statutes of Missouri, relating to legal issues, real estate and/or personnel, and to discuss matters related to negotiation of a contract pursuant to Section 610.021(12), RSMo. and/or proprietary information pursuant to Sec. 610.021(15), and/or information related to public safety and security measures pursuant to Section 610.021(18) and (19) RSMO. Alderman McAndrew seconded the motion.**

**The motion passed on a roll call vote: Alderman Boulton – Aye; Alderman Lintz – Aye; Alderman Berkowitz – Aye; Alderman McAndrew – Aye; Alderman Buse – Aye; Alderman Sokol – Aye; and Mayor Harris – Aye.**

There being no further regular business the meeting adjourned at 7:37 p.m.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

BOARD OF ALDERMEN  
CITY OF CLAYTON, MISSOURI

In Re: 747 Middle Polo Drive )  
Appeal of Decision of Plan Commission/Architectural Review Board )

**Findings and Decision on Appeal**

This is an appeal submitted by William Burris and DBK Trust, LLC. ("Appellants"), 733 Middle Polo Drive, of a decision by the Plan Commission/Architectural Review Board ("PC/ARB") on May 4, 2020, approving plans for construction of a garage addition to be constructed for Ken and Lori Aston ("Applicants") at their home at 747 Middle Polo Drive.

Pursuant to Section 400.230 of the Municipal Code, an aggrieved party may, within 15 days of the decision for which redress is sought, file with the Board of Aldermen a written request for reconsideration and appeal of any decision of the Architectural Review Board. The written request must set forth in a concise manner the decision being appealed and all grounds known to the appellant as to wherein and why the decision is allegedly in error.

The City Clerk received this appeal on May 18, 2020, and the Board of Aldermen finds such filing to be timely.

**Standing**

Pursuant to Sec. 400.230 of the Clayton City Code appeals from decisions of the PC/ARB can be taken only by an "aggrieved party."

As specified in Sec. 405.390 an "aggrieved party" is either:

1. The applicant, or
2. One who:
  - a. Suffers a demonstrable and material adverse effect from the decision at issue, and
  - b. Is the owner or occupant of property within two hundred (200) feet of the subject property as measured from all boundaries of the subject property.

Appellants own and/or occupy the property adjacent to the subject property, thereby satisfying the requirement of Subsection (2)(b) for non-applicants to have standing to pursue an appeal from the PC/ARB.

But non-applicants must also satisfy the requirement of Subsection (2)(a) and bear the burden to allege and establish that they "suffer a demonstrable and material adverse effect from the decision at issue."

Appellants' complaints concern the PC/ARB's approval of a site plan that includes a third curb cut for the subject property which, Appellants contend, is contrary to provisions of the City's subdivision standards in Chapter 415 of the City Code. Appellants also assert the PC/ARB cannot vary the cited subdivision regulations as that authority rests solely with the Board of Adjustment; hence the PC/ARB approval was unauthorized. But Appellants have not alleged or established that they will suffer any demonstrable and material adverse effect from the approved garage addition or the curb cut of which they complain.

An appellant bears the burden to show that they have the requisite standing to pursue an appeal. Appellants here have not satisfied that burden and their appeal must, therefore, be dismissed.

### **Merits of the Appeal**

As a courtesy to Appellants and Applicants, we also wish to express that we have reviewed Appellants' filing and the evidence presented by Applicants and find that the claims of the Appellants lack merit and the appeal would not support any change to the PC/ARB decision even if they had established standing so as to require us to reach the merits of the case.

As a starting point it should be noted that Sec. 400.230 establishes an appeal process when an aggrieved party establishes that the decision of the PC/ARB is "in error." We read this requirement as constraining the Board of Aldermen only to correct errors by the PC/ARB in applying code standards or assessing relevant evidence. We are not empowered to substitute our judgment for that of the PC/ARB and usurp their authority even if we might view the matter differently than they did.

A brief synopsis of the claims by Appellants and the relevant standards at issue readily demonstrates that the PC/ARB correctly applied the law and accurately assessed the facts and circumstances before them.

The Appellants claim that the proposed addition of a third curb cut for the subject property violates City Code Section 415.600(C) which limits curb cuts to a maximum of two per lot. But Section 415.600 is a part of the City's subdivision regulations - not the zoning and architectural standards at issue in the PC/ARB's review and at issue in this appeal. The subject property was not being replatted or subdivided in the proceedings below. City Code Section

405.1020(A)(1)(d), *Scope of Modifications Authorized*, provides that the PC/ARB is to consider and require that site plans provide "driveway and garage entrances that are compatible and efficient with the structure and surrounding neighborhoods." The PC/ARB's decision to approve the design and location of the garage addition was the most appropriate outcome in these circumstances, as the design of the garage addition and the location of the new curb cut preserves the architecture of the existing residential structure on site as well as preserves the existing neighborhood character. There is no evidence the PC/ARB was in error in approving the driveway and access arrangements.

Likewise Appellants claim the third curb cut violates City Code Section 415.600 (d) which limits access to a corner residential lot from either street, but not both. Again, the cited regulation is a part of the City's subdivision standards and those standards were not the subject of the decision being appealed. Moreover, Section 415.570 of the City's subdivision regulations provides that the Public Works Director "shall have the final decision regarding all public improvements and infrastructure location." And Section 415.600 (C) provides that the "location of all access points shall be determined by the Director of Public Works." There is no evidence the PC/ARB was in error in approving the driveway and access arrangements.

Finally, Appellants claim that authority to vary subdivision standards in Chapter 615 of the City Code rests solely with the Board of Adjustment to the exclusion of PC/ARB site plan approvals such as those at issue here, is legally flawed. Pursuant to Section 415.060 *Variations and Exceptions*, The Board of Adjustment has no authority to vary or modify the requirements of the subdivision regulations in Chapter 615.

**WHEREFORE**, the appeal of William Burris and DBK Trust, LLC. with regard to PC/ARB approval of a garage addition and site plan for the property at 747 Middle Polo Drive is **DISMISSED**

**Adopted by the Board of Aldermen of the City of Clayton this 28th Day of July, 2020.**

Attest:

  
City Clerk

  
Mayor