

Date: April, 5, 2006

To: Planning Commission

From: Peterson Z. Vollmann, Planner III

Through: Scott Miller, Zoning Manager

Subject: Adoption of Findings for Approval and of a Conditional Use Permit for a Consultative and Financial Use at 3900 Piedmont Avenue, and possible adoption of Conditions of Approval.

As you will recall, case number A06-031 for an appeal of an administrative denial of CU05-480, for a Consultative and Financial Use (Real Estate Office) located at 3900 Piedmont Avenue was heard before the Planning Commission on March 8, 2006. At the hearing the Planning Commission voted 3-2 to approve the appeal and overturn the Zoning Managers denial of the project, thus approving the Conditional Use permit for a Financial and Consultative use at the location. Pursuant to Planning Code Section 17.134.050, approved projects are required to meet the required Conditional Use Permit findings. As requested by the Planning Commission the item is back on the April 5, 2006 Commission agenda for adoption of the required findings. In addition, staff has included recommended Conditions of Approval that may also be adopted by the Commission.

FINDINGS FOR APPROVAL FOR CU05-480, 3900 PIEDMONT AVENUE

FINDINGS FOR APPROVAL:

The Planning Commission finds that the proposal meets all the required Use Permit criteria (Sections 17.134.050 & 17.44.110) as set forth below and which are required to approve your application. Required findings are shown in **bold** type; reasons your proposal does or does not satisfy them are shown in normal type.

SECTION 17.134.050 – MINOR CONDITIONAL USE PERMIT FINDINGS:

- A. That the location, size, design, and operating characteristics of the proposed development will be compatible with, and will not adversely affect, the livability or appropriate development of abutting properties and the surrounding neighborhood, with consideration to be given to harmony in scale, bulk, coverage, and density; to the availability of civic facilities and utilities; to harmful effect, if any upon desirable neighborhood character; to the generation of traffic and the capacity of surrounding streets; and to any other relevant impact of the development.**

The Planning Commission finds that the proposal will not adversely affect the surrounding neighborhood given that the subject building will not undergo any significant exterior modifications and the proposed use will be similar to that of a previous use as a bank which is in the same use classification of Financial and Consultative Business. The surrounding area is well served by mass transit and freeway access and would not create any negative impacts on surrounding traffic capacity.

- B. That the location, design, and site planning of the proposed development will provide a convenient and functional living, working, shopping, or civic environment, and will be as attractive as the nature of the use and its location and setting warrant.**

The Planning Commission finds that the location, design and site planning of the proposed development will provide a functional working environment and will be as attractive as the nature of the use since no exterior changes are proposed to the existing layout of the subject property or structure, and the property will continue to look as it does in its current state.

- C. That the proposed development will enhance the successful operation of the surrounding area in its basic community functions, or will provide an essential service to the community or region.**

The Planning Commission finds that the proposed business would enhance the operation of the surrounding commercial district by introducing a new real estate office to the area and assist with bringing consumers to the Piedmont Avenue commercial district.

- D. That the proposal conforms to all applicable design review criteria set forth in the DESIGN REVIEW PROCEDURE of Chapter 17.136 of the Oakland Planning Code.**

The Planning Commission finds that the Design Review criteria are met since there are no significant exterior modifications proposed.

E. That the proposal conforms in all significant respects with the Oakland General Plan and with any other applicable plan or development control map which has been adopted by the City Council.

The Planning Commission finds that the proposal is compatible with the Neighborhood Center General Plan Area.

SECTION 17.44.110 – C-28 CONDITIONAL USE PERMIT FINDINGS:

A. That the proposal will not detract from the character desired for the area;

The Planning Commission finds that the proposal will not detract from the desired character of the area as the subject building will not undergo any significant exterior modifications and will essentially remain as it is today.

B. That the proposal will not impair a generally continuous wall of building facades;

The Planning Commission finds that since the building elevation will remain as it is today it will not further disrupt a continuous wall of building facades.

C. That the proposal will not weaken the concentration and continuity of retail facilities at ground level, and will not impair the retention or creation of an important shopping frontage;

The Planning Commission finds that the proposal would not weaken the concentration and continuity of retail facilities at the ground level because the building does not immediately lend itself to a retail establishment in its current state, and it would not impair the creation of an important shopping frontage because retail may not be a viable use at that location due to the size of the building and cost of renovation that would be required.

D. That the proposal will not interfere with the movement of people along an important pedestrian street;

The Planning Commission finds that the proposal will not create a new situation that would further interfere with the movement of people along Piedmont Avenue, as all curb cuts are existing.

E. That no front yard parking, loading area, or driveway shall connect or abut directly with the principal commercial street unless the determination can be made:

1. That vehicular access cannot reasonably be provided from a different street or other way,

The Planning Commission finds that the subject lot presently contains two vehicular access points, one of which is for access to the parking lot at the rear of the building with access off Montell Street, and the other is a former drive through that was necessary to accommodate the drive up teller for the previous bank that operated at the location. The drive through element which comes directly out onto Piedmont Avenue is no longer necessary and should be removed.

2. That every reasonable effort has been made to share means of vehicular access with abutting properties, and

The Planning Commission finds that it would not be feasible to share a driveway with another commercial lot as the adjacent building on Piedmont appears built out to the property line.

F. That the amount of off-street parking, if any, provided in excess of the requirements of this code will not contribute significantly to an increased orientation of the area to automobile or truck movement.

The Planning Commission finds that the proposal will not change from the existing configuration, as the site was previously developed with auto orientation in mind, but contains a rear parking lot that limits its visual presence from the street. The curb cut on Piedmont Avenue should be removed.

G. The proposal will conform in all significant respects with any applicable district plan which has been adopted by the City Council;

The Planning Commission finds that the proposal is compatible with the Neighborhood Center General Plan Area.

CONDITIONS OF APPROVAL FOR CU05-480, 3900 PIEDMONT AVENUE

STANDARD CONDITIONS:

1. Approved Use.

a. Ongoing.

The project shall be constructed and operated in accordance with the authorized use as described in this letter and the plans submitted on **September 21, 2005**. Any additional uses or facilities other than those approved with this permit, as described in the project description and the approved plans, will require a separate application and approval. Any deviation from the approved drawings, conditions of approval or use shall required prior written approval from the Zoning Administrator.

2. Effective Date, Expiration, and Extensions

a. Ongoing.

This permit shall expire **two calendar years** from the date of this letter, the effective date of its granting, unless actual construction or alteration, or actual commencement of the authorized activities in the case of a permit not involving construction or alteration, has begun under necessary permits by this date. Expiration of any valid building permit for this project may invalidate this approval. Upon written request and payment of appropriate fees submitted no later than the expiration date of this permit, the Zoning Administrator may grant an extension of this permit, and up to two subsequent extensions upon receipt of a subsequent written request and payment of appropriate fees received no later than the expiration date of the previous extension.

3. Scope of This Approval; Changes to Approval

a. Ongoing.

The project is approved pursuant to the Planning Code only and shall comply with all other applicable codes, requirements, regulations and guidelines, including but not limited to those imposed by the City's Building Services Division and the City's Fire Marshal. Minor changes to approved plans may be approved administratively by the Zoning Administrator. Major changes to the approved plans shall be reviewed by the Zoning Administrator to determine whether such changes require submittal and approval of a new, independent permit. The City of Oakland reserves the right at any time during construction to require certification by a licensed professional that the as-built project conforms to all applicable zoning requirements, including but not limited to approved maximum heights and minimum setbacks. Failure to construct the project in accordance with approved plans may result in remedial reconstruction.

4. Modification of Conditions or Revocation

a. Ongoing.

The City Planning Department reserves the right, after notice and public hearing, if required, to alter Conditions of Approval or revoke this permit if it is found that the approved facility or use is violating any of the Conditions of Approval, any applicable codes, requirements, regulations or guidelines, or is causing a public nuisance.

5. Reproduction of Conditions on Building Plans

a. Prior to issuance of building permit.

These conditions of approval shall be reproduced on page one of any plans submitted for a building permit for this project.

6. Defense, Indemnification & Holdharmless

- a. Within ten (10) business days of the filing of a claim, action or proceeding that is subject to this provision, the applicant shall execute a Letter Agreement with the City, acceptable to the Office of the City Attorney, which memorializes this condition of approval.*

The applicant shall defend (with counsel reasonably acceptable to the City), indemnify, and hold harmless the City of Oakland, the City of Oakland Redevelopment Agency, the Oakland City Planning Commission and their respective agents, officers, and employees from any claim, action, or proceeding (including legal costs and attorney's fees) against the City of Oakland, Oakland Redevelopment Agency, Oakland City Planning Commission and their respective agents, officers or employees to attack, set aside, void or annul, an approval by the City of Oakland, the Planning and Zoning Division, Oakland City Planning Commission, the City of Oakland Redevelopment Agency or City Council relating to this project. The City shall promptly notify the applicant of any claim, action or proceeding and the City shall cooperate fully in such defense. The City may elect, in its sole discretion, to participate in the defense of said claim, action, or proceeding.

SPECIFIC CONDITIONS:

7. Removal of Existing Pole Sign

- a. Prior to issuance of a building permit and/or initiation of use*

The final building permit plan set shall contain a sign plan that includes the removal of the existing non-conforming pole sign at the corner of Piedmont Avenue and Montell Street. The new signage for the property shall meet current Planning Code Standards, and shall be reviewed through the Small Project Design Review process.

8. Removal of Curb Cut on Piedmont Avenue

- a. Prior to final of any building permit.*

The existing curb cut located on Piedmont Avenue in the front of the project site shall be removed.