

PIEDMONT PLANNING COMMISSION

Special Meeting Minutes for Monday, January 10, 2022

A Special Session of the Piedmont Planning Commission was held on Monday, January 10, 2022, via ZOOM teleconference, in accordance with Government Code Section 54953. The agenda for this meeting was posted for public inspection on January 3, 2022, in accordance with the General Code Section 54954.2 (a).

CALL TO ORDER Chair Rani Batra called the meeting to order at 6:00 p.m. There was a break from 7:22 p.m. – 7:31 p.m.

ROLL CALL Present: Commissioners Rani Batra, Yildiz Duransoy, Jonathan Levine, Tom Ramsey, Douglas Strout, and Justin Zucker

Absent: None

Staff: Planning & Building Director Kevin Jackson, Senior Planner Pierce Macdonald, Associate Planner Gopika Nair, Assistant Planner Steven Lizzarago, and Administrative Assistant Mark Enea

Guests: ELS Architecture and Urban Design (ELS) President/CEO Clarence Mamuyac, Jr., ELS Project Manager Kim-Van Truong, SWA Landscape Architect Marco Esposito

PUBLIC FORUM There were no speakers for the public forum.

REGULAR CALENDAR The Commission considered the following items as part of Regular Calendar:

Piedmont Community Pool Presentation ELS President/CEO Clarence Mamuyac, Jr. presented an update and slideshow on the activities related to the development of a design, for the Piedmont Community Pool. The information presented included the recap of workshop series, analysis of site and context of the civic center core, and the final concept design that was approved for review by City Council.

In regard to the three workshops, the first workshop was an open gallery and there was a lot of information available, a lot of questions asked, and advice was given. It was the first time to discuss certain issues and topics about the project. There was a diverse range of comments and questions that was gathered. The second workshop included three site plan ideas that were shared from the master plan in 2016. The consensus was that Concept C was the favorite. The third workshop consisted of a revised version of Concept C, which unveiled the final version.

Mr. Mamuyac stated that the architectural context of the building, at this point, does not really have a style; it should be of a landscaped form. He continued describing the neighborhood context, noting that there is no predominant architectural style.

A range of architectural styles work because of the beautiful, established Piedmont landscapes. The landscaping is the common denominator that ties everything together.

Mr. Mamuyac continued to present the project by describing how the site would be terraced in relation to the drop in grade from Bonita Avenue to Hillside Avenue, with the second story of the building being on the same level as the tennis courts. He also described the visual barriers between the project and neighboring residential properties: the 21-foot-high fence, which is clad and ivy, that provides a substantial backdrop and barrier between the two homes on the other side, and the tennis courts,

and the significant difference in grade between the pool building and the house at the corner of Bonita and Vista Avenues.

In regard to the landscaping for the project, SWA Landscape Architect Marco Esposito presented that they love how the site cascades from Bonita Avenue to the rec building, with all the mature vegetation. They want to add more hedges around the pool deck with the vegetated fence lines and add more street trees on Magnolia Avenue. They are intrigued to move one of the live Oak Trees to the corner, to make a shorter cross walk to the high school and to hold the corner with one of those trees, that would otherwise be in the way for the footprint. The concept is to make a green, cascading, hillside, park-like, feeling for the new Aquatic Center.

On the lowest part of the site, next to the rec building, is the area that has been identified as the stormwater treatment area. They are aware of the Bay Friendly landscape policies and will be incorporating appropriate plant species to make the vision a reality.

After addressing Commissioners' inquiries about building materials, Mr. Mamuyac presented the upcoming schedule:

A City Council presentation on January 18, 2022; and meetings with the Planning Commission, including February 14, 2022 (update), March 11, 2022 (submit planning application package), March 14, 2022 (possible update), and April 11, 2022 (official decision). The intended completion of the project is Summer 2024.

Planning & Building Director Kevin Jackson stated that the Planning Commission's role with the Piedmont Community Pool project is to review and act on a design review permit for the structures being proposed. They will need to make findings for the three standards for approval for a design review permit. On the site plan, they would recognize the Bay Friendly landscaping code sections, as well as the compliance with the General Plan and Design Guidelines. In the General Plan, there are some policies that are relevant to this project. Stemming from the General Plan is the Climate Action Plan, and one of the project goals is to make it all electric and zero net energy per the Climate Action Plan. There are chapters of the Design Guidelines on site development as well as buildings in general. What the Planning Commission does not weigh in on is programming.

In summary, the Planning Commission would be responsible for reviewing the buildings, the walls and fencing. They would not be responsible for the pools or the pool features. In Zone B, there are no building height limits, no setback requirements, no other structure coverage limits, and no parking requirements.

In response to Commissioner questions, Mr. Mamuyac stated that the energy analysis information will be available in March 2022. The materials for the building, for civic buildings, must be long-lasting, beautiful, and enduring. The materials used must be planet friendly.

The building on Bonita Avenue will have two entries for pedestrians.

The large signage design was thought of to put some more action into the Aquatic Center. It was designed to add super graphic branding to bring it into the fold with this project. For the lighting, there will be a consistent glow when nighttime comes.

The architectural design, traditional vs. nontraditional, had taken into consideration the all-electric standards, zero net energy requirements and the site. The hill side issues also played a part in the design.

Chair Batra stated the presentation was very helpful and it gave a good sense of integration of the different functions of the spaces around the pool complex and how they are connected together by this design. There was a great sense of scaling and massing form a lot of different vantage points.

There was no **public testimony**.

Senate Bill 9 Related to Housing Presentation

Senior Planner Pierce Macdonald presented the City of Piedmont's implementation of Senate Bill 9 (SB 9).

The implementation of Senate Bill 9 (SB 9) was signed by Governor Newsom on September 16, 2021. The new State of California statutory requirements in SB 9 became effective January 1, 2022.

SB 9 requires local jurisdictions, like Piedmont, to grant ministerial (by-right) approval of qualifying housing developments of one to two units and so-called "urban lot splits" for property within single-family zoning districts, such as Piedmont's Zone A and Zone E. The provisions in SB 9 do not apply in the multifamily zones or commercial zones. The City is able to enforce existing objective standards and create new objective standards for projects permitted under SB 9. The staff is currently reviewing SB 9 related ordinances adopted by other cities and any guidance provided by regional and state agencies with the intent of drafting amendments to the Piedmont City Code that will provide for SB 9 implementation in compliance with State law.

SB 9 adds Sections 65852.21 and 66411.7 to the California Government Code and amends Government Code Section 66452.6.

SB 9 would also limit some of the typical requirements imposed with new subdivisions, such as dedication of public right-of-way or installation of off-site improvements. It restricts the City's requirement for easements to only those needed to access the right-of-way and for public services or facilities.

Summary of SB 9

The SB 9 summary is provided below. Key concepts that inform the City's understanding of SB 9 include:

Eligibility

To be eligible the project must:

- Be located on private property in a single-family zone, which is interpreted to mean Zone A or Zone E.
- Involve the demolition of no more than 25% of the exterior walls or structure of an existing building, unless allowed by local ordinance, or the structure has not been occupied by a tenant within the last three years.
- Be used as ownership housing or for rental terms of more than thirty days; in other words, short-term rentals are not permitted on properties developed under SB 9.

- Be consistent with applicable City development standards without the need for a discretionary waiver, exception, variance, design review permit, or conditional use permit.
- Be consistent with applicable private covenants and/or homeowners' association restrictions.
- Result in two parcels of approximately equal size if an urban lot split is proposed. Lots must be a minimum of 1,200 square feet, and no lot may be less than 40 percent of the original lot's area.

In addition, the project is ineligible for SB 9 if:

- The parcel is located in an area that contains sensitive species, creeks, or wetlands, subject to a conservation easement, or designated in a conservation plan.
- The parcel is located in areas subject to high wildfire severity zones, flood zones, or earthquake hazard zones unless the project would incorporate appropriate building code measures or mitigations.
- Housing on the parcel has been occupied by a tenant in the last three years, or if the project involves the demolition of a structure occupied by a tenant within the past three years, a property subject to rent control, or a property that was withdrawn from rental use pursuant to the Ellis Act within the prior 15 years.
- The parcel is located within an historic district or property.
- No urban lot split is permitted if the parcel was subdivided under SB 9 previously or subdivided by any person acting in concert with the subdivider of an adjacent property. A person "acting in concert with" an owner is not defined in SB 9, but staff recommends that it be defined as a person that has common ownership of the subject parcel with the owner of the adjacent parcel, a person acting on behalf of, acting for the predominant benefit of, acting on the instructions of, or actively cooperating with, the owner of the parcel(s) being subdivided.
- Development would require building over or across public utility and City-owned easements such as storm drain and sewer easements. Encroachment over or across a City-owned easement remains a discretionary process pursuant to City Code Section 17.06.050, Private construction on city or public utility property.
- Development would require removal of City street trees. Typical residential development does not require the removal of City-owned street trees. The removal of trees in the public right-of-way is not explicitly permitted by SB 9, and the City has determined that the removal of City-owned street tree(s) is outside the scope of SB 9, pursuant to City Code Section 3.18.1, Removal of trees in parking strips.
- It would result in more than four units per a single-family lot.

b. Number of permitted dwelling units (Section 65852.21).

SB 9 allows a property owner to apply for and receive approval for both an urban lot split to create two parcels from one single-family lot and also for the construction of up to two dwelling units. Units may be constructed on a newly created parcel divided through an urban lot split or on an existing vacant or developed lot.

A lot that has been subdivided under the provisions of SB 9 may not be subdivided again nor may an adjacent property under the same ownership (or owned by a person “acting in concert with” the owner) be split. SB 9 permits may include a condition of approval requiring the recordation of a restriction on the deed of the property, limiting further subdivision.

c. Minimum size and maximum setbacks; other development standards

Standards Governing Construction (pursuant to Government Code Section 65852.21)

SB 9 requires that the City allow for a minimum 4-foot side or rear setback; other setbacks may be larger, such as Piedmont’s required 20-foot street yard setback in Zone A and Zone E. Piedmont’s 20-foot street yard setback is an objective standard. Pursuant to SB 9, no minimum setback is required for an existing structure, or one built in the same location and to the same dimensions as an existing structure. A local jurisdiction can require that the new property lines created by an urban lot split subdivision under SB 9 comply with building code requirements.

Objective standards found in the City’s zoning code for Zone A and Zone E will be applied to applications filed under SB 9 in the City of Piedmont. Other objective standards in the City Code include Building Code requirements, Fire Code requirements, and Public Works Standard Details. In addition, restrictions recorded on property, such as City-owned easements and owner-occupancy requirements for Accessory Dwelling Units (ADUs) and Junior Accessory Dwelling Units (JADUs), would continue to be enforced.

Standards Governing Subdivisions (pursuant to Government Code Section 66411.7)

The City may also apply other objective development standards from its subdivision ordinance, such as frontage requirements, subdivision design, minimum access to roadways and public right-of-way, etc. However, with application of any development standard, a city must allow for a minimum of two housing development units of at least 800 square feet each on each parcel and the creation of two parcels that are no smaller than 1,200 square feet.

The staff report and presentation noted objective standards applied to development applications and subdivision applications filed under SB 9 in Zone A and Zone E.

d. Review authority and process

Review and approval of both SB 9 housing development units and of urban lot splits are required to be ministerial, meaning approved by right, without discretionary review, public hearing, neighbor comments, or right of appeal, if all applicable standards are met on an eligible parcel. SB 9 provides limited authority for the building official to deny an SB 9 application.

e. Owner occupancy

In the case where there is an urban lot split pursuant to SB 9, an affidavit is required to be signed by the applicant, indicating their intent to occupy one of the housing development units as their principal residence for a minimum of three years from the date of the approval of the urban lot split subdivision. No other owner-occupancy requirement is permitted in connection with a lot split. The City may also impose owner occupancy requirements on one of the two SB 9 housing development units if

no urban lot split is proposed. The City continues to study this approach. Owner occupancy requirements for an ADU approval before 2019 and for a JADU before or after 2019 would continue to be required with SB 9.

f. Short-term rentals

No short-term rental (i.e. less than 30 days) of any unit created under SB 9 is permitted. The City may require the applicant to record a deed restriction on the property stating that the property may not be used as a short-term rental, and the requirement may remain in perpetuity.

g. Properties subject to private covenants, codes, and restrictions (CC&Rs)

SB 9 does not prohibit a Homeowners Association (HOA) from imposing restrictions or limitations on urban lot splits or additional housing development units through its CC&Rs.

h. Subdivision improvements and dedication of public rights-of-way

SB 9 explicitly prohibits a local jurisdiction from requiring off-site improvements (such as construction of a public sidewalk or fire hydrant) or requiring dedication of land for right-of-way in conjunction with the urban lot split. However, easements necessary to provide public facilities and public services may be required. The City may also require parcels created via an urban lot split to “have access to, provide access to, or adjoin the public right-of-way.” The City of Piedmont has the requirements that all new lots, including urban lot splits under SB 9, must have 60-foot-long frontage along the right-of-way in Zone A and 120-foot-long frontage along the right-of-way in Zone E, so long as these standards do not preclude development of the minimum number and size of units and parcels.

The following types of applications would continue to be subject to existing design review regulations:

- renovations and expansion of existing structures involving no increase in number of housing units,
- site features and site improvements,
- voluntary parking spaces and driveways,
- accessory structures,
- nonresidential developments (signs, CUPs, etc.).

Ms. Macdonald suggested the following list of consideration for discussion at the meeting, as follows:

- affordability of units created under SB 9
- ADUs and JADUs on lots created under SB 9
- owner occupancy provisions
- Architectural design standards for ministerial review
- Subdivision design standards for ministerial review of urban lot splits

In response to Planning Commissioner questions, Planning & Building Director Jackson made the following clarifying statements:

The maximum units are two units per lot and if you subdivide the lot into two units, then the lot would be four units total. The law is not specific for the urban lot split, if there can be ADUs and JADUs, in addition to those two units. The City will need to consider if it makes sense to have both a duplex and another two ADUs on the newly created lots.

In regard to the criteria for SB 9 being affordable, the state has said frequently that by increasing the capacity and the number of units being produced overall in every income category, this will lower the cost of housing in California. There isn't any data available yet that suggests if restricted to affordable housing, there would be less units.

In response to questions about possible a condominium conversion and the City regulation requiring the provision of an equivalent number of off-site affordable housing to replace rental housing, Director Jackson noted this scenario needs further review to determine how to implement it. One of the possible projects under SB 9, would be a large house that gets divided into multiple units, and questions like "Was it rented and at what level was it rented?"

Director Jackson noted that the frontage requirement for Zone A is 60 feet and its 120 feet in Zone E. An existing nonconforming lot isn't ineligible for SB 9. The development has to be allowed, but it can be required to allow access to the new parcel with the new development, but it has to be within reason. Provisions need to be made for safety and access and can be mitigated. Director Jackson also addressed historic properties and districts. SB 9 specifies that it does not allow a requirement of notifying neighbors.

Objective design standards examples are ones with no discretion. For example, the window should have a reveal of 3 inches minimum and it either meets that or it doesn't, or the roof shall have composition shingle roof of x inches thickness and it either meets that or it doesn't. Because there is no discretion, it's hard to find a balance of what is allowed versus design flexibility. It's a balance between certainty and what is being constructed under those standards, and also being flexible to adjust to many different locations and conditions.

There is an exception for a new structure that is built in the same location and dimension as the existing structures. This is allowable if it meets all the criteria because there is no limit on demolitions and it would be exempt from California Environmental Quality Act (CEQA), so any protections for potential historic resources would not come into play.

Planning Commissioners generally discussed issues, such as how to make implementation of SB 9 clear for members of the public, how to implement SB 9 so that the City increases the production of new housing units, and how to encourage creation of new housing units that are affordable to community members.

There was no **public testimony**.

ADJOURNMENT

There being no further business, Chair Batra adjourned the meeting at 8:21 p.m.