

**CITY OF PIEDMONT
COUNCIL AGENDA REPORT**

MEETING DATE: October 18, 2004

FROM: Kate Black, City Planner

SUBJECT: Review of Planning Commission Design Review Decision at 62 Farragut Avenue

PURPOSE OF REVIEW REQUEST:

Pursuant to Section 17.26 of the City Code, the City Administrator is asking the City Council to review a Planning Commission decision on a Design Review application (#04-0386) at 62 Farragut Avenue.

The purpose of the review is not to overturn the Planning Commission's decision, but to clarify certain aspects of the Commission's decision, including a review of specific conditions of approval proposed by Planning Staff but not adopted in full by the Planning Commission. One of the recommended conditions is related to financial instruments and a time-line to guarantee compliance with the decision within a reasonable time.

Additionally, staff has proposed language to augment the findings for the decision, and modifications to the conditions of approval to clarify the decision and address changes in construction timing due to this request for review. The changes proposed by staff are indicated in strike-through and italics format in the recommendation below.

RECOMMENDATION:

- A. Uphold the Planning Commission's actions to approve part of Application #04-0386, 62 Farragut Avenue, and deny part of the application, subject to the following conditions of approval, as amended by staff:
1. In compliance with the City Council's condition of approval of Application #04-0057, the final inspection of the building permit for the proposed "Phase II" work shall occur, and the construction of all elements of the project shall be completed, by ~~May 15, 2005~~ *July 15, 2005*.
 2. Prior to the issuance of a building permit, the applicant shall enter into an Agreement for Completion of *Construction and Landscaping* Work with the City

of Piedmont to be approved by the City Attorney or Deputy City Attorney. The agreement will specify among other criteria, the requirement of a financial instrument such as a \$250,000 deposit to ensure construction of the improvements if the above specified time-line is not met, and *a an additional deposit estimated to be 25,000* to cover extraordinary administrative and staff costs involving the City Attorney, Building Official, City Planner, City Engineer or other City personnel in the processing and enforcement of the conditions (pursuant to Section 17.29) *should it be needed. The deposit amount may be modified to more accurately reflect just the portions of the application that were approved, or to reflect a subsequent approval for other features, subject to City approval.* The agreement shall also have a provision that the application will be scheduled for rehearing at the ~~June 12, 2005~~ *August 15, 2005* Planning Commission meeting if the construction time-line is not met.

3. Based on the scope and nature of the proposed landscape and development plans, a best management practice plan for construction which complies with the new Alameda Countywide Clean Water Program General and Residential Conditions of Approval will need to be developed by the applicant prior to obtaining a building permit.
4. Prior to the issuance of a building permit, the plans shall eliminate all existing inconsistencies (including those listed at the end of this report). Staff will review the plans and determine whether or not the final design requires further design review or variances.
5. Prior to the issuance of a building permit, the applicant shall apply for and receive approval of an encroachment permit for the construction of the dry stack retaining walls in the City Right-of-Way.
6. Prior to the issuance of a building permit, the applicant shall submit a construction management plan which shall be subject to staff review and approval.
7. The approved plans are those submitted on September 1, 2004, after neighbors were notified of the project and the plans were available for public review. The September 1, 2004 plans replace plan sets submitted on August 13, 2004, August 18, 2004 and August 24, 2004. *Only the pool, spa, existing retaining wall directly above the spa that runs the length of the pool parallel to both the house and pool, the retaining wall and fence that runs parallel to Farragut on the south side of the property from Sea View Avenue to King Avenue, and the "disputed area" of the semi-circular driveway off of Farragut Avenue have been conditionally approved. All other features have not been approved.*
8. *A revised design that provides access to the existing carport, or an alternative*

parking plan shall be submitted and approved prior to the issuance of a building permit, but at least by December 13, 2004.

9. *Prior to the issuance of a building permit, a landscape plan shall be submitted and subject to staff review.*

B. Adopt the following findings for approval of certain features of the project:

1. The design of the wall, pool and rear fence is desirable because it is aesthetically pleasing as a whole and harmonious with existing development in that they are architecturally compatible with the existing style of the house and the permitted fencing. *These features comply with Design Guidelines II-3(a) and (b) in that the proposed materials match existing materials elsewhere on the property, and Guidelines II-3(c) in that the approved features are carefully integrated with the three dimensional forms and proportional relationships of existing improvements.*
2. The design of the improvement does not have a substantial adverse effect on neighboring properties because there is no impact on neighbor view, light or privacy. *The features comply with Guidelines II-5(a) and (b) in that they are properly sited with respect to adjacent residences and will not create a loss of light and air. The conditionally required landscape plan shall provide screening of the pool and spa to ensure privacy with adjacent structures.*
3. The design does not adversely affect pedestrian safety, vehicular traffic, or the convenience of either pedestrians or vehicles because there is no impact on public circulation patterns. The improvements only affect the residents of the property.

C. Adopt the following finding for denial of certain features of the project:

1. The driveway configurations do not comply with the City's Design Review Guidelines because they require that illegally constructed and oversized retaining walls remain in place and these walls do not comply with the City's Design Review Guidelines. *The walls adjacent to the carport eliminated the driveway access to the existing carport, and do not comply with Guidelines II-1, II-2 and II-3 in that they are not proportionally related to the scale of similar features in the immediate neighborhood and on contiguous properties. The walls do not meet Guideline II-3(c) in that they are not carefully integrated into the three dimensional form and proportional relationship of the existing property. The walls do not meet Guideline IV-2 in that in certain locations, they are unnecessarily higher than 6 feet. They do not comply with Guidelines IV-2(a) and II-4 because they were not divided into a series of terraced walls of no more than 4 feet, and in several locations, do not have adequate areas appropriate for planting strips.*

BACKGROUND INFORMATION:

The current application follows several similar applications requesting approval of improvements to the property at 62 Farragut Avenue, some of which have not been constructed and some of which were illegally constructed without permits, and are subject to a Stop Work Order by the Building Official.

This has been a lengthy process with numerous applications and hearings and a lot of documentary information. Rather than including all of the background information into the body of this report, the information has been compiled into exhibits at the end of the report for the Council's reference, including the following:

- Exhibit A, page 9 History of Related Applications
- Exhibit B, page 11 Code Compliance Analysis
- Exhibit C, page 12 Planning Commission Meeting Minutes
- Exhibit D, Page 32 City Council Meeting Minutes

CURRENT APPLICATION:

There are currently two separate applications for this property under City review. One application (Staff Design Review application #04-0385), proposes a new fencing plan along Sea View Avenue, and is currently being processed by staff. The second application for "Phase II" site improvements to the property (#04-0386), was reviewed by the Planning Commission, and is the subject of this report. The fencing plans have been included in the "Phase II" architectural plans for reference only.

The current "Phase II" application requests substantial changes to the rear and to the northeastern corner and eastern side of the property that are generally similar to the improvements in two prior applications reviewed by the Commission in April and August. However, it recently came to light that only part of the existing semi-circular driveway at the front of the property was approved as part of the "Phase I" improvements in 2000 even though all of it has been completely reconstructed. Therefore, the portion of the semi-circular driveway that is in the northeastern corner was also subject to retroactive approval. The applicant requested to "reserve the right" to later assert and provide evidence that the entire semi-circular driveway was approved as a Phase I improvement. The "disputed" area is shown on Sheet 1 of the plans.

The applicant has submitted a time-line for construction (page 80), and an estimated cost of construction of \$250,000 (page 81). As noted in the recommendation above, staff has proposed modifications to the recommended condition of approval related to the time-line in order to address continued plan inaccuracies and the delay resulting from this review. The possibility of a modified cost of construction is also recommended as a condition of approval to address a possible change in scope of the project.

The primary components of the proposed improvements include the following listed below. It should be noted again, that there continue to be inconsistencies in the plans that are defined in brackets, and listed in Exhibit E, page 36.

1. Conversion of the existing carport on the eastern end of the house into a garage, with brick exterior walls and a steel roll-up door (it is not clear whether the door is mechanically or manually operated). The existing roof deck railing is proposed to be a brick parapet with an iron railing on top to match the existing railing on the western end garage.

{It is noted that the “Existing” elevations on sheets 12, 13 and 14 incorrectly show the existing conditions as constructed without approvals, not the conditions of the property prior to the illegal construction.}

2. Retroactive approval to eliminate the prior driveway access to the carport and to construct a new driveway leading to the proposed garage conversion of the carport. The proposed driveway is similar to the driveways considered in May and August in that it is proposed to be between the semi-circular driveway and the proposed Sea View Avenue fencing, but instead of pavers or a gravel surface, it proposes grasscrete. Several brick retaining walls of up to 12' in height have been constructed without permits which eliminated the prior vehicular access to the carport.

An alternative driveway access is proposed and is indicated on Sheet 3A, which shows a new 12 foot wide curb cut on Sea View Avenue, and a driveway that leads straight in to the proposed garage, with a landscaped garden shown in the area of the other proposed driveway between the Sea View Avenue fencing and the semi-circular driveway.

{It is noted that the alternative site plan shown on Sheet 3A does not define the “disputed” semi-circular driveway area consistent with that shown on Sheet 3.}

3. Approval of a new pool and spa behind the residence at the rear with 5 foot 2 inch high wrought iron pool guard fence around the pool area.

4. Retroactive approval of a 6' 4" high wrought iron fence on top of a brick wall along the eastern rear property line between the main property and 236 King Avenue (the prior garage/cottage), ranging in height from 11' 4" to 12' 4". This wall is proposed to connect to a wall of a similar design with a 3' 4" high wrought iron fence on top of a keystone wall along the central rear property line, ranging in height from 4' 11" to 7' 2".

Other features include:

1. A mix of Basalite cobblestone pavers for the alternate driveway and autocourt, brick pavers for the walkways, stairs, landing and pool deck, and blue tumbled flagstones for several walkways;
2. Several brick retaining walls ranging in height up to 5';
3. A 6' high brick pool equipment enclosure with a slate roof and solid wood door;
4. Two different fountains;
5. A landscaping plan for the eastern edge and rear of the property;
6. Wall mounted lights on both sides of the proposed garage door;
7. Dry stack retaining walls between the proposed fencing and sidewalk along King Avenue and between the proposed fencing (under separate review) and the sidewalk along Sea View Avenue. The walls are proposed on the City Right-of-Way and require an encroachment permit.

PLANNING COMMISSION DECISION:

Attached are the meeting minutes from the September 13, 2004 Planning Commission meeting (Exhibit C-1, page 12). The Planning Commission again expressed their distress at the applicant's disregard of planning approvals by constructing without building permits, and at his disregard of past promises and assurances. They noted the continued condition of the property with weeds and debris was disrespectful to the neighborhood.

The Commission discussed the new information related to the northeastern portion of the existing semi-circular driveway which was constructed in the quadrant of the property near the corner of Farragut and Sea View Avenues. According to City records, changes to that portion of the driveway were not clearly requested by the applicant or approved by the City as part of the "Phase I" improvements in 2000, although until recently, it was assumed by staff that the entire semi-circular driveway had been approved since the driveway in that quadrant mirrors the changes approved to the driveway in the northwestern quadrant at the corner of Farragut and King Avenues. The applicant has stated in writing that he wishes to reserve his right to dispute the City's interpretation that the driveway was not requested or approved in the Phase I plans. However, the Commission approved the driveway retroactively at the September 13th meeting, noting that an appropriate engineering solution to support the driveway, such as retaining walls or backfill of compacted soil, would need to be determined by a structural engineer and approved by staff.

The Commission discussed the three alternative driveway and parking solutions necessary to replace the access to the carport that was lost by the illegal construction of the retaining walls adjacent to the existing carport. For the third time, the Commission denied the "Farragut Avenue" driveway (which proposed minor modifications from the two earlier versions) proposed between the Sea View Avenue property line and the illegally constructed retaining walls. They expressed

general support for the alternative conceptual plans for construction of a two-car garage adjacent to the existing 3-car garage that has access from the existing King Avenue driveway, but noted that complete plans (elevations, floor plans, etc.) must be submitted in order for it to be approved. Several Commissioners expressed support for a third alternative for a new driveway from Sea View Avenue to the proposed carport/garage conversion, but found that it would be more appropriate if the driveway was not on axis, but curved in order to provide visual screening of the proposed garage to properties across the street and to avoid the removal of a large street tree.

After much deliberation, several Commissioners noted that although there were elements of the project that could not be approved, they expressed an interest in moving the project along, finding several aspects of the proposed project to be appropriate to the site and in keeping with Chapter 17 and the Design Guidelines. Ultimately, the Commission voted unanimously to approve certain features and deny others as follows:

The Planning Commission **approved**:

1. the existing retaining wall directly above the spa that runs the length of the pool parallel to both the house and pool;
2. the pool and spa;
3. the retaining wall and fence that runs parallel to Farragut on the south side of the property from Sea View Avenue to King Avenue; and
4. the “disputed area” of the semi-circular driveway off of Farragut Avenue, subject to staff design review and approval as it pertains to modification of retaining walls.

The Planning Commission **denied with prejudice**:

1. the portion of the new proposed driveway that connects the existing carport to the Farragut Avenue driveway (Alternative A); and
2. the proposed new curb cut on Sea View Avenue with a driveway leading directly to the existing carport (Alternative B);

The Planning Commission **denied without prejudice**:

1. the illegally constructed retaining walls/planters between the carport and the Farragut driveway;
2. the current “L-shaped” planter on the Sea View side of the property;

3. the conversion of the existing carport into a garage (noting that a new plan for converting this carport into an enclosed interior space without access from inside the house shall be submitted for staff approval); and
4. the King Avenue garage (Alternate C). The Commission agreed that required off-street parking on the King Avenue side of the property was an acceptable option; however, it directed that the applicant submit detailed drawings and elevations indicating the exterior door placement and ingress/egress plan for a new King Avenue garage.

UPDATE SINCE THE PLANNING COMMISSION MEETING:

In May, the City Council required all illegal construction to be removed from the property by September 17, 2004, unless the illegally constructed features were approved or approved to be modified in the intervening months. Two applications for reconsideration of the features, including minor modifications, were submitted for Planning Commission review; an application that was denied on August 9, 2004 (the meeting minutes are attached as Exhibit C-2, page 16), and the current application which was heard on September 13, 2004.

Because none of the illegally constructed features were approved as constructed at either hearing, the applicant began demolition of those features on September 16th. Attached are photographs that show the demolition and re-grading progress from September 16th through September 22nd. As you can see, the unapproved features were removed with the exception of the Sea View Avenue fence which is under separate staff review, and a portion of the retaining wall near the existing carport. The upper portion of the wall was removed, but the lower portion of the wall was retained as a support to the semi-circular driveway pending a final engineering solution to support the approved driveway.

It should also be noted that on October 8, 2004, the applicant submitted a new Planning Commission application for the November 8, 2004 meeting. The plans propose two alternative parking solutions: a two-car garage adjacent to the existing three-car King Avenue garage, and a curb-cut with a curved driveway from Sea View Avenue that leads to a new sunroom and two-car garage in the location of the existing carport.

Date report prepared: October 13, 2004

EXHIBITS:

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| Exhibit A, page 9 | History of Related Applications |
| Exhibit B, page 11 | Code Compliance Analysis |
| Exhibit C | Planning Commission Meeting Minutes |
| | C1, page 12 September 13, 2004 |
| | C2, page 16 August 9, 2004 |