

**City of Piedmont
COUNCIL AGENDA REPORT**

DATE: November 15, 2004

FROM: Kate Black, City Planner

SUBJECT: **Conditional Use Permit for Joshua B. Bernstein, DDS
1345 Grand Avenue, Suite 201**

RECOMMENDATION:

1. Approve the Planning Commission's recommendation of conditional approval of the proposed conditional use permit for a term of 10 years; and
2. Adopt the Planning Commission's findings in the separate memorandum (Exhibit F) by reference.

APPLICATION SUMMARY:

The application requests a Conditional Use Permit for a new cosmetic dental practice for Joshua B. Bernstein, DDS. The dental office is proposed for Suite 201 at 1345-75 Grand Avenue, which is a multi-tenant office building with a mix of office businesses. The dental office proposes to occupy 1,250 square feet of space previously occupied by a law office and book publishing company. The law office/publishing company is proposing to stay in the remaining 750 square feet of the space, called the "residual suite" on the plans.

More specifically, the proposed cosmetic dental use, as defined in the application in response to the application form questions in bold, is as follows:

Current and/or Proposed Use: I have a 20 year old, mature local dental practice. I focus on larger cosmetic cases for front and back teeth. We offer cosmetic solutions for each patient's unique dental problems in a very high service atmosphere. For example, we see only 1 patient at a time and we schedule realistically so that we run 100% on time. On a typical day, I see anywhere from 1-4 patients. Currently, we have a hygienist one day per week (Thursday) who sees 5-8 patients on that day.

Exterior and Interior Changes to be Made to Existing Structure: No exterior changes with the exception of approved signage. The interior will be remodeled to be a beautiful

cosmetic dental office. This includes a reception area, an ADA restroom, 2 treatment rooms, patient lounge, storage room, sterilization area, consultation room, and a private office.

Days and hours of operation: Monday through Thursday, 8:00 a.m. to 12:00 noon, 1:30 p.m. to 5:00 p.m.

Number of on-site parking spaces: The building has 3 spaces allocated for this proposed dental office with additional on-site spaces available as indicated by the attached parking space allocation schedule. Monday -Wednesday, there are currently 2 employee cars. On Thursday, there are 3, all of which will park on Linda Avenue well above Grand Avenue. There are 48 on-site parking spaces for this building for the 7 suites, of which one will be occupied by this dental practice. Due to the low-volume nature of my practice, the available on-site parking will easily exceed our needs. For example, we currently have 1 employee in addition to my wife, who works part time at the office and part time at home. At present, we have a part time hygienist who works only on Thursdays. As previously mentioned, our business model is to see only one patient at a time and to run 100% on time, so we would rarely have any more than 2 patient cars in the parking lot at any given time.

Maximum number of people using business/organization at one time: Assuming the rare occasion that all 4 team members are working at the same time, with 2 patients being treated, 1 by the hygienist and one by the dentist, the maximum number would be 6. This scenario could only occur on a Thursday in our existing practice.

Type(s) of staff/personnel, number of each: 1 dentist, 1 patient coordinator, 1 part-time practice coordinator, 1 hygienist on Thursdays.

Potential Neighborhood Impacts from Business Related Activities: None, as parking would be the same or less than it is currently and mail delivery would be as it is currently in delivering to other suites.

Projected busiest hours/days: Our busiest day presently is Thursday when our hygienist is working. Busiest hours are from 8-12 and from 1:30-5. However, by any standard, our office is not what would normally be considered busy. It is common for our practice to see only 2-3 patients daily, Monday through Wednesday, and it is not uncommon for us to see only 1 patient. This is economically feasible because we do comprehensive treatment that commands a higher fee.

Anticipated Gross Annual Revenue: \$600,000

Describe How the Proposed Use Will Benefit Piedmont Residents: I have been a Piedmont resident for 38 years and I have been advertising in the Piedmont Post for the past 5 years. Many of my existing patients are Piedmont residents. It would be a

convenience to these patients as well as to me and my family for my office to be close to home.

ADDITIONAL INFORMATION:

The applicants currently operate their cosmetic dental business in Berkeley. They have submitted their recent client schedule (Exhibit B, page 13) from September 21, 2004 through October 19, 2004 as evidence of the number of clients typically seen on average each week.

The property owner, on behalf of the applicants, submitted a parking space allocation list for all of the tenants in the building, which allocates 3 spaces to this use, and 2 parking spaces to the "residual" law/publishing office use (Exhibit C, page 32). The prior 1999 conditional use permit for the entire suite indicated that there would be a maximum of 5-6 people using the law/publishing office, and that 6 parking spaces had been allocated for the entire suite.

It is noted that the Building Department has determined that a second means of egress must be provided for the "residual" office suite. This change would involve modifications to the proposed floor plan, but those modifications could be reviewed and approved by staff during the building permit stage of the application.

No signage is proposed as part of this application.

PLANNING COMMISSION ACTION:

During their deliberations, the Planning Commission noted that a dental office was an appropriate use for the building and location in the commercial zone. In answer to a Commission question, the applicant stated that he had a mature practice that had been scaled down over the years from a large volume general dentistry practice to a specialized cosmetic dentistry practice with only one dentist, and no plans to expand the business. He stated that he only practiced Monday through Thursday, and that on Thursdays, a hygienist would also be available to clean teeth.

After reviewing all of the application materials and public testimony, the Commission concluded that the proposed cosmetic dental practice was a low intensity use with few patients and low parking impacts, and voted unanimously to recommend approval of the application with the following conditions:

1. The term of the permit be for 10 years;
2. Prior to the final approval of the building permit for tenant improvements to the dental office, a second means of egress must be provided for the "residual suite".

Since it appears that access will need to occur through part of the proposed dental office, a revised floor plan shall be subject to review and approval of staff.

PLANNING COMMISSION FINDINGS:

Due to the short time between the Monday Planning Commission meeting and the Wednesday mailing of this report, the meeting minutes were not yet available. A copy of the meeting minutes, along with a memorandum that provides the exact wording of the Planning Commission's findings for approval will be available in a separate packet for the City Council meeting.

ZONING AND CODE COMPLIANCE:

The dental office is proposed to be located in Zone D. According to Section 17.8 of the City Code, Zone D is established to regulate and control commercial development in appropriate areas of the City, which will serve the residents of the City, consistent and in harmony with the character of existing and proposed development in the neighborhood and adjacent residential areas.

In accordance with section 17.24.2 of the Piedmont City Code, a conditional use permit shall be obtained or renewed prior to undertaking change in actual existing use or a structural change relating to a commercial use in Zone D.

Conditional uses which serve the residents of the City are those uses which residents would be expected to use on a regular basis. They do not include uses which would be expected to draw the major portion of their clientele from outside the City of Piedmont and the surrounding area. Section 17.24 of the City Code sets forth the procedures and approval criteria for conditional use permits:

Procedure. In accordance with Section 17.24.4 of the City Code, after reviewing all of the application information and testimony provided at the hearing, the Planning Commission will make a recommendation to the City Council that the permit be approved or denied. The Commission may recommend modifications to the permit or conditions of approval as necessary to preserve the health, safety, general welfare, beauty, and tranquility of the City, and may recommend a specific expiration date of the permit. If no date is specified, the term shall be one year, pursuant to Section 17.24.7 (b).

Determination. In accordance with Section 17.24.5 of the City Code, the Commission shall make its determinations on the individual merit of each application without following or establishing precedent. The primary basis for approval or denial shall be the general good of the City.

CITY COUNCIL ACTION REQUIRED:

According to Piedmont City Code Section 17.24.8, the City Council shall hold a hearing to consider the recommendation of the Planning Commission and any further evidence regarding the application and either approve or disapprove the Conditional Use Permit request.

To approve the application for a conditional use permit the City Council must make findings to support all of the standards:

- (a) The use is of benefit to Piedmont residents because;
- (b) The use will be properly related to other land uses and transportation and service facilities in the vicinity because;
- (c) Under all the circumstances and conditions of the particular case, the use will not have a material adverse effect on the health or safety of persons residing or working in the vicinity because;
- (d) The use will not be contrary to the standards established for the zone in which it is to be located because;
- (e) The use will not contribute to a substantial increase in the amount of noise or traffic in the surrounding area because;
- (f) The use is compatible with the General Plan and will not adversely affect the character of the surrounding neighborhoods or tend to adversely affect the property values of homes in the surrounding neighborhoods because;
- (g) Adequate provision for driveways to and from the property has been made; facilities for ingress and egress from secondary streets instead of arterials, where possible, have been made; provision for parking in compliance with this Chapter 17 has been made, together with sufficient agreements to enforce the carrying out of such plans as may be required by the Council; and
- (h) The plans conform to all other laws and regulations of the City, provided, however, that the Council shall have the right to require front, rear, and side yard setbacks greater than those otherwise provided in the laws and regulations of the City if the Council finds that such larger front, rear, and side yard areas are necessary to provide for the health, safety, and general welfare of the residents of Piedmont in accordance with its zoning laws.

CLEANWATER CONSIDERATIONS

The proposed project will not create *or replace* more than 5,000 square feet of impervious surfaces and will not result in any significant changes to water runoff at the site. Implementation of stormwater treatment Best Management Practices (BMPs) as well as the Bay Area Stormwater Management Agencies Association's *Start at the Source* criteria for stormwater quality protection is not necessary.

CEQA COMPLIANCE

The proposed project is Categorical Exempt from the provisions of the California Environmental Quality Act pursuant to Article 19, Sections 15301 and 15323.

PERMIT STREAMLINING ACT:

This application was submitted on October 8, 2004, and deemed complete on November 7, 2004. Under the Permit Streamlining Act, the City Council must either approve or disapprove the application by the January 3, 2005 City Council meeting.

Date Report Prepared: Wednesday, November 10, 2004

EXHIBITS IN PACKET:

- Exhibit A, page 7 Application Materials
- Exhibit B, page 13 Recent Client Schedule
- Exhibit C, page 32 Letter and Parking Space Allocation List from Patrick Ellwood
- Exhibit D, page 34 Neighborhood Comments and Letters
- Exhibit E, separate Floor Plans

EXHIBITS IN LATER PACKET:

- Exhibit F Planning Commission Findings
- Exhibit G Planning Commission Meeting Minutes