

**CITY OF UNION CITY  
MINUTES FOR THE REGULAR PLANNING COMMISSION MEETING  
OF JANUARY 8, 2009, 7:00 P.M.  
IN THE COUNCIL CHAMBERS OF CITY HALL  
34009 ALVARADO-NILES ROAD, UNION CITY, CALIFORNIA**

- I. **ROLL CALL:** Commissioners Raymond Gonzales Jr., Jo Ann Lew, Froilan (Roy) Panlilio, Gurnam (Gary) Singh, and Chairperson Tikisa Anderson  
Alternate: Phillip Crosby

**STAFF:** Joan Malloy (Planning Manager); Carmela Campbell (Senior Planner); Mark Evanoff (Redevelopment Agency Manager); Mike Rodriguez (Assistant City Attorney); Farooq Azim (Principle Engineer); Kris Fitzgerald (Administrative Assistant).

- II. **APPROVAL OF MINUTES:** The regular Planning Commission Minutes of December 4, 2008 were approved as submitted.

- III. **ORAL COMMUNICATIONS:** None.

- IV. **WRITTEN COMMUNICATIONS:** None.

- V. **PUBLIC HEARINGS:**

- A. **CONTINUED HEARINGS:** None.

- B. **NEW HEARINGS:**

1. **CITY OF UNION CITY, Citywide, General Plan Amendment AG-02-08;**

Initiated by the City of Union City, as applicant, a request to:

- a. Modify the *General Plan Land Use Diagram, Figure LU-1* in the area of the Station Mixed-Use Commercial (CSMU) District to accommodate the revised location of certain City facilities including a public plaza and public promenade;
- b. Modify the *Station District Core Area Concept Plan, Figure LU-2* and *Station District Core Area Land Use Diagram, Figure Lu-3* to update the figures to reflect the revised layout and associated street configurations; and
- c. Modify the *Station Mixed-Use Commercial (CSMU)* text to incorporate civic facilities and transportation facilities, such as BART, bus and passenger rail as acceptable uses for the area.

The City has prepared a supplemental Mitigated Negative Declaration for this project and has also determined that, with the incorporation of mitigation measures, the project will not have a significant effect on the environment.

Joan Malloy, Planning Manager, presented the staff report.

Commissioner Lew asked how BART feels about the revision of the BART property and the change of the bus routes through the station.

Ms. Malloy replied that the site design changes to the BART property were requested by BART because they were uncomfortable with the bus plaza being located in the center of the property which did not provide them good future development opportunities. Ms. Malloy stated that now the buses come in directly adjacent to BART.

Commissioner Lew agreed that the redesign is better and more pedestrian friendly.

Commissioner Lew asked if BART intends to develop retail in the promenade area.

Ms. Malloy replied that both the original plan and the new plan show retail frontage along that central access way and staff has retained that. Ms. Malloy stated that BART is interested in creating a vibrant mixed-use center and retail could be a part of that.

Commissioner Lew asked how many stories they could build.

Ms. Malloy replied that it could possible go up to eight stories. Ms. Malloy stated that this is a long range plan or vision and not something that is going to happen right away.

Commissioner Singh asked why the blocks were reduced from six to three.

Ms. Malloy replied that it was very important to provide full circulation around the site and to consolidate buildable area.

Commissioner Panlilio asked if Eleventh Street was widen to accommodate street loading.

Ms. Malloy replied that there will be no street loading on Eleventh Street.

Chairperson Anderson asked for some clarification of the diagrams and exhibits and their correlation to the resolutions.

Ms. Malloy provided clarification.

Chairperson Anderson asked if approval of the negative declaration should be part of the approval.

Ms. Malloy replied that it should.

Mike Rodriguez, Assistant City Attorney, stated that the final decision-maker is the City Council and the Planning Commission makes a recommendation to the City Council.

Ms. Malloy stated that a line could be added to the first finding that “That a supplemental negative declaration was prepared and the project would not have a significant effect on the environment and that the Planning Commission recommends consideration and approval of the same.”

Chairperson Anderson stated that if they are going to recommend approval then it should be a motion and not a finding.

Mr. Rodriguez replied that they do not have to make a motion to make a recommendation it can be included as part of the findings.

Chairperson Anderson opened the public hearing.

Chairperson Anderson closed the public hearing.

Commissioner Gonzales referred to L.U.-B.1.7 on page 5 of the staff report and asked if the “should” could be strengthened and made a “shall”.

Chairperson Anderson asked if these statements were taken from the General Plan.

Ms. Malloy replied that these are policies that are already in the General Plan and were cited to show consistency with the current policies.

Commissioner Lew made a motion to recommend to the City Council approval of General Plan Amendment AG-02-08 to the City Council, making findings 1 - 4, and adopt a resolution confirming this action.

Commissioner Singh seconded.

AYES	5 (Anderson, Lew, Gonzales, Panlilio, Singh)
NOES	0
ABSTAIN	0
ABSENT	0

Chairperson Anderson recessed the meeting.

Chairperson Anderson reconvened the meeting.

**2. MID-PENINSULA HOUSING COALITION, 11<sup>th</sup> Street and Decoto Road, (APN: 087-0019-004-02); Zoning Text Amendment AT-07-08, Site Development Review SD-04-08, and Use Permit UP-11-08:**

**a. Zoning Text Amendment AT-07-08:** To allow 1.3 parking stalls per unit for affordable rental housing developments where 1.5 parking stalls per unit is required and other minor exceptions to development standards;

**b. Use Permit (UP-11-08):** To allow the construction of 6-story structures and for minor exceptions to the district’s development standards, and for a mixed-use commercial and residential development on Blocks 3 and 4 in the CSMU district that may accommodate up to 400 units of housing, 43,400 square feet of commercial space, and associated private parking; and

**c. Site Development Review (SD-04-08):** To allow the first phase of construction on Block 4 for a mixed-use development of up to 160 units of housing, a parking garage, and 8,400 square feet of commercial.

The City has prepared a supplemental Mitigated Negative Declaration for this project and has determined that, with the incorporation of mitigation measures, the project will not have a significant effect on the environment.

Joan Malloy, Planning Manager, presented the first part of the staff report.

Carmela Campbell, Senior Planner, presented the second half of the staff report.

Chairperson Anderson asked for if the Planning Commission is supposed to choose between the two sets of drawings for approval.

Ms. Campbell replied that staff did not have time to consolidate the plan sets into one set so staff would like the Planning Commission to approve both sets and then if there are differences the plans in Exhibit B would take precedence.

Chairperson Anderson asked why should we approve either set of plans. Chairperson Anderson expressed his dissatisfaction with how the plans were presented.

Ms. Malloy stated that she understands that this is a lot of information to consider this evening. Ms. Malloy stated that this project was originally on track to submit to the State in early February for a grant application. Ms. Malloy stated that due to the State budget problems the grant applications have been delayed. Ms. Malloy suggested that the commission go through the project, ask questions and if necessary, the item can be continued to a future meeting to allow for a more complete review.

Chairperson Anderson stated that it would be better if there were a single set of documents and drawings to review than having to choose among them.

Ms. Malloy replied it was not staffs' intention to have the commission choose between the documents.

Chairperson Anderson expressed his concerns about the documents. Chairperson Anderson asked if the commission was to recommend approval to the City Council for this project.

Ms. Malloy replied that is correct.

Chairperson Anderson expressed his concern that because of the amount of documentation the commission would not be able to give the project a fair hearing this evening.

Ms. Malloy strongly encouraged the commission to review the project this evening because the applicant was present and if the commission did not feel comfortable making a decision this evening they could provide direction for the applicant and staff before the project came back to the commission.

Ms. Malloy noted that there is a Text Amendment also before the commission and that is independent of the rest of the project and the commission might be able to move that part forward.

Commissioner Panlilio agreed that it might be better to continue this project.

Commissioner Panlilio noted that there only appears to be one elevator in the garage and asked if that is correct.

Juan DeLeon, Project Manager, Mid-Peninsula Housing, asked if the commission would like the architect to make a presentation about design of the project.

Chairperson Anderson agreed.

Peter McKenzie, Architect, and David Baker, Architect, made a presentation about changing the parking garage to all above ground for the project.

Chairperson Anderson asked how would this affect the schedule.

Mr. McKenzie replied that the construction schedule would be greatly reduced.

Commissioner Singh asked that they go over the other modifications that have occurred since the study session in December.

Mr. McKenzie stated that the City Council was concerned about the massing along Eleventh Street and so they modified that area but other than that the site area stayed pretty much the same.

Commissioner Singh asked if there were modifications made to the loading zones.

Mr. McKenzie pointed out where the loading zones are intended to be.

Commissioner Singh asked if trucks delivering packages to the area fronting on Eleventh Street would be allowed to block the street.

Mr. McKenzie replied that loading will not be allowed on Eleventh Street. Mr. McKenzie pointed out that the commercial area is not a part of their project.

Commissioner Singh expressed his concerns about the difficulty that those commercial spaces might have in receiving deliveries.

Mr. McKenzie pointed out that there is a service corridor along the back of the commercial spaces.

Commissioner Panlilio asked if the flex-commercial spaces have parking spaces assigned to them.

Mr. McKenzie stated that he did not know how the spaces would be allotted.

Ms. Campbell stated that it was her understanding that the City would be providing parking for these commercial spaces and having them park in the garage would be ideal.

Chairperson Anderson asked how people would access the garage.

Mr. McKenzie pointed out the access corridors on the plans.

Commissioner Panlilio pointed out that the elevator is not near the handicapped parking.

Mr. McKenzie replied that in the revised version the elevator is moved to the side with the handicapped parking.

Commissioner Gonzales asked if the walkway would be covered or open.

Mr. McKenzie replied that all but twenty feet would be covered.

Chairperson Anderson asked how residents will receive delivered packages.

Mr. McKenzie showed where the delivery driver would park and then go into the lobby and be able to access the elevator. Mr. McKenzie stated that they could put another intercom in the secondary lobby that connects to the tenant units.

Ms. Malloy pointed out that there is on-street parking on Eleventh Street but the time limits and constraints have not yet been identified. Ms. Malloy stated that it could be designated short term or even some loading zone to provide access for deliveries.

Chairperson Anderson asked aren't we trying to avoid having deliveries on Eleventh Street.

Ms. Malloy replied that is correct but she is making a suggestion in response to other commissioner's concerns that there is inadequate loading area.

Commissioner Gonzales suggested having color-coded on-street parking on M Street to provide a loading zone area.

Mark Evanoff, Redevelopment Agency Manager, pointed out that the City will be installing paid parking throughout the station district that may be in place by the fall of 2009.

Commissioner Gonzales asked if the new parking garage plan provides more spaces.

Mr. McKenzie replied that it is the same number of spaces.

Commissioner Gonzales asked if the new parking garage design resulted in less tenant units.

Mr. McKenzie replied that is correct; there would be eight fewer units with the new garage design.

Commissioner Gonzales asked if the missing units were market rate units or affordable units.

Mr. McKenzie replied that the whole project is affordable.

Commissioner Gonzales asked if not having all 160 units would impact efforts to get the funding grant from the State.

Mr. Evanoff replied that the City will be able to meet the grant requirements, meet State affordable housing goals, and still have units over and above to meet the inclusionary housing requirements on Block 3.

Mr. Evanoff pointed out that the City does have an interest in having parking in this garage. Mr. Evanoff stated that by avoiding underground parking, the City is saving close to 50% off on the price per stall and by having parking above grade it is becoming economically feasible for the Agency to participate in the construction of that garage.

Commissioner Gonzales asked if prior to the revision of the plans was Mid-Peninsula going to put up any money towards the garage.

Mr. Evanoff stated that the Redevelopment Agency has committed \$13,000,000.00 towards this project. Mr. Evanoff noted that garages are very expensive but Mid-Peninsula came up with a design to address the modified parking requirement and offered to build additional parking stalls for the City to use for public parking. Mr. Evanoff noted that originally the parking was going to be underground which is very

expensive to build. Mr. Evanoff stated that with the modified garage design the cost per stall will drop significantly and it should be economically feasible for the City and the Agency to participate in the funding for the parking garage.

Chairperson Anderson asked if the units that were removed as a result of the design change will negatively affect the unit type mix.

Mr. DeLeon replied that primarily the loss is of one-bedroom units. Mr. DeLeon stated that most of the units are two and three-bedroom units.

Commissioner Gonzales asked why the frontage along Eleventh Street was changed.

Mr. McKenzie replied that it was changed as a result of the study session held with the City Council. Mr. McKenzie stated that the Mayor wanted to see more modulation of the façade.

Commissioner Gonzales asked why the balconies were added.

Mr. McKenzie replied that the balconies were in the previous drawings, they just were not as big.

Commissioner Gonzales stated his concerns about the safety of the balconies.

Mr. McKenzie stated that the balconies are designed to the building code and to discourage kids from climbing on them.

Commissioner Lew asked for an explanation of how trash and recycling will be disposed of.

Mr. McKenzie showed on the plan how the residents will dispose of trash through chutes on each floor to a trash area in each building where there are trash compactors, and then would be taken to the curb for disposal on trash days.

Commissioner Lew asked if they had already contacted Waste Management and a recycling company.

Mr. McKenzie replied that they have not yet.

Commissioner Lew asked if the trash rooms are located next to the loading zones.

Mr. McKenzie replied that is correct.

Commissioner Lew asked if satellite dishes would be allowed.

Mr. DeLeon replied that the units will be pre-wired so that there will only be one or two large dishes on the roof and this would accommodate the large satellite TV carriers which should take care of most of the demand. Mr. DeLeon stated that there are laws that prohibit the City and Mid-Peninsula from taking any action against those residents who choose to put a dish on their balcony to receive some international channels.

Commissioner Lew asked if they will charge for the satellite dish access.

Mr. DeLeon stated that Mid-Peninsula will not charge the tenants but tenants who want satellite TV will have to pay the provider for that service. Mr. DeLeon stated that cable TV will also be available for purchase by the tenants.

Commissioner Lew referred to condition #14 and asked where would be the rear of the site for the location of this equipment.

Mr. McKenzie replied that most likely the transformers and other equipment of that nature will be located in the garage area.

Commissioner Lew asked about the equipment needed for the individual units.

Mr. McKenzie replied that there will be rooms inside each building for the equipment needed.

Commissioner Lew stated that condition #14 should be changed since all the equipment will be inside so there will be no need for landscaping.

Mr. DeLeon stated that sometimes a public utility agency will force them to put one piece of equipment outside and that is not in their control but they will make sure that it is landscaped if needed.

Commissioner Lew noted that they want to reduce storage from 200 cubic feet to 175 cubic feet and stated that she does not agree with that because people collect things and need a place to put it. Commissioner Lew asked if there is a difference between that storage and bicycle storage.

Mr. McKenzie replied that they are proposing a closet that is three feet wide by nine feet high by six feet deep. Mr. McKenzie stated that they felt that would be adequate for their tenant's needs. Mr. McKenzie stated that they would be willing to look at the issue again.

Commissioner Lew asked where the storage room would be located.

Mr. McKenzie pointed out on the drawing that they would be located in one area for each building.

Commissioner Lew asked where bicycles can be stored.

Mr. McKenzie replied that there will be some limited bicycle corrals in the garage and then they can also be stored in the storage space.

Commissioner Lew asked if any of the units will have fireplaces.

Mr. McKenzie replied they will not.

Mr. DeLeon stated that sometimes there are fireplaces in the common areas.

Commissioner Lew stated that she does not want to see the storage area reduced because not only will the tenant's use it for regular storage but will be expected to keep their bicycles in it as well.

Commissioner Lew referred to the text amendment and asked if Mid-Peninsula is the only provider of affordable housing in this area.

Ms. Malloy replied that this is the only stand alone affordable housing development.

Mr. Evanoff stated that this development will cover the obligation for affordable units towards the market rate units on blocks 2 and 3.

Commissioner Lew asked how the City benefits from this text amendment.

Mr. Evanoff replied that in this case the City benefits because there will be more money available for amenities since it will not be spent on parking.

Commissioner Lew stated that the City is trading eight units for more parking and she does not think that is a good trade.

Ms. Malloy stated that the additional parking will benefit the entire district.

Commissioner Lew asked what would happen to the extra spaces if the tenant's don't need them.

Ms. Malloy replied that Mid-Peninsula will divide the stalls among the units as they deem necessary.

Ms. Campbell stated that the parking garage will be designed in such a way as to segregate the tenant parking from the public parking.

Commissioner Lew asked if the commercial/flex spaces will have assigned parking.

Ms. Campbell stated that if Mid-Peninsula is willing to accommodate them that would be fine or they might be assigned spaces in the public garage.

Commissioner Lew referred to conditions #21 and #22 and asked if "final occupancy" and certificate of occupancy" mean the same thing.

Ms. Campbell stated that they should be consistent.

Commissioner Lew asked if all the units would be full at final occupancy.

Ms. Campbell replied that final occupancy is when the Building Department signs off that a building has all construction complete and is safe to be occupied.

Commissioner Lew asked why would you wait so long for the landscaping.

Ms. Malloy stated that typically landscaping is the last element in the construction process.

Commissioner Lew asked if people would be allowed to move in before the landscaping is put in.

Ms. Malloy replied that is not correct because the building would not have received approval for final occupancy.

Commissioner Lew referred to condition #57 and asked about the fire control.

Ms. Campbell replied that fire control rooms are required in multi-family buildings or buildings over a certain height.

Commissioner Lew noted that there is a typographical error in condition #106, that the dollar amount should have a comma instead of a period.

Commissioner Lew noted that the findings in the staff report do not match the findings in the resolution. Commissioner Lew noted that the recommendation in the staff report is not correct.

Commissioner Lew asked why the zoning text was being amended instead of asking for a Variance for this project.

Ms. Malloy stated that when the text was originally written parking standards were different. Ms. Malloy stated that with transit-oriented development parking standards have changed and so this text amendment will bring the parking standards more flexibility in the Station District.

Mike Rodriquez, Assistant City Attorney, stated that a Variance is a fairly technical exception to the existing standards and they are not always easily granted. Mr. Rodriquez stated that it is better to build more flexibility into the standard rather than trying to get a Variance.

Commissioner Lew stated that she likes the project but does not see why they shouldn't get a Variance instead of having the text amendment.

Commissioner Gonzales asked what difference does it make for paying the DIPSA fees if it prior to issuance of building permits or at the time of building permit issuance.

Ms. Campbell stated that the condition was revised to be consistent with the other conditions and that the applicant will have to pay these fees whether it is conditioned or not because these fees are required by City ordinance.

Commissioner Gonzales asked what particular metal surfaces are going to be stainless steel.

Mr. McKenzie replied that it was being considered for handrails and other similar uses.

Commissioner Gonzales referred to item #30 from the desk item and asked for an explanation regarding the annexation of the flexible/commercial component.

Mr. Evanoff replied that the vision is that all the commercial businesses in the Station District will participate in a Business Improvement District, to provide a high level of maintenance for this area. Mr. Evanoff stated that it is to generate funding for the extra services that they will require.

Commissioner Gonzales asked if the garage could be a potential revenue source via paid parking.

Mr. Evanoff replied that they do anticipate that it will be a revenue generator and as the station builds out and parking demand rises the City can raise the parking rates.

Commissioner Gonzales stated his concerns that there will not be enough parking in the Station District.

Commissioner Gonzales asked if the BART police will have any jurisdiction in the Station District.

Mr. Evanoff replied that BART police are only responsible for BART property and the Union City Police are responsible for the Station District.

Mr. Evanoff stated that there will be a substation in the commercial/flex space in the Station District.

Chairperson Anderson stated that he is against the reduction in storage space.

Chairperson Anderson referred to condition #4 and if the DDA will be the same.

Ms. Campbell stated that the DDA will have the same enforcement as the conditions of approval.

Chairperson Anderson would like a condition added that will also go into the DDA.

Chairperson Anderson asked which phase would the first year apply to.

Ms. Malloy replied the first phase.

Chairperson Anderson stated his concerns about the text amendment. Chairperson Anderson stated that normally when the commission makes exceptions to the code, it is through the Variance process, which ensures fairness because we have to treat all the applicants' the same. Chairperson Anderson stated his belief that the text amendment could be ripe for abuse because it includes all development standards as exceptions. Chairperson Anderson stated that he is opposed to the text amendment as it is written.

Chairperson Anderson referred to condition #18 and he would like to see it deleted.

Chairperson Anderson referred to condition #29 and asked why a check is specified.

Ms. Campbell stated that these fees are required by the Department of Fish and Game and so the applicant makes out the check for the fees and then a staff member takes the check and the required paperwork and files it with the clerk for Alameda County.

Chairperson Anderson referred to condition #48 and asked if that referred to the building foundation.

Ms. Malloy replied that it just refers to each building.

Ms. Campbell suggested adding "foundation" to the condition.

Farooq Azim, Principle Civil Engineer, stated that the soils report deals with the foundation of each of the buildings.

Chairperson Anderson referred to condition #49 and #51 and suggested that they be revised to be similar to condition #50 where the applicant is the doer of the action.

Chairperson Anderson referred to condition #80 and asked if that conflicted with condition #119 and perhaps they could be combined as one.

Ms. Campbell agreed that combining them would work.

Chairperson Anderson noted that the conditions that come after #85 would have to be renumbered due to the desk item.

Chairperson Anderson referred to condition #115 and asked who is going to do the cleaning.

Ms. Campbell suggested adding wording similar to condition #116.

Chairperson Anderson asked if there were only elevators to access the corridors or are there stairs as well.

Ms. Campbell replied that there are stairs at each access point.

Chairperson Anderson opened the public hearing.

Mr. DeLeon stated that they appreciated the commission's comments and suggestions and feel that they can bring a good project forward.

Commissioner Gonzales asked if there is a possibility of getting the eight units back.

Mr. DeLeon asked for the commission's opinion on the changed plans.

Commissioner Singh stated that if it saves two million dollars, he is all for it.

Mr. DeLeon stated that if the commission feels that way, they will concentrate on keeping the new garage design and finding a way to get back as many of the eight units as possible.

Commissioner Gonzales stated that he hopes they can get back all eight units.

Mr. DeLeon stated that they will do their best.

Commissioner Lew asked if they could let the commission know if there is a change in the mix of units.

Mr. DeLeon replied that they will provide charts showing the before and after of the unit mix.

Barry Ferrier, 32212 Allison Way, Union City, stated that he is not sure what the commission is voting on tonight. Mr. Ferrier stated that he was on the advisory committee and they proposed 1.3 parking and he is wondering why it doesn't apply to the whole area regardless of being a rental or purchase unit. Mr. Ferrier referred to section 18.38.250 and asked why density was taken out and what if the developer wants to increase the density as well as the building height.

Ms. Malloy replied that density is controlled by the General Plan and this was just a cleanup.

Chairperson Anderson closed the public hearing.

Commissioner Lew suggested asking for a continuance so that the applicant can bring back an updated package.

Ms. Malloy stated that staff's position and the agency's position is that parking in the garage should be maximized and if that requires adjustments to the site plan it would be prudent so that the agency can make effective investments for parking. Ms. Malloy stated that they would recommend they should pursue the site plan that is on the screen.

Ms. Campbell stated that a condition could be added to require the applicant to bring a minimum of 5 units back into the plan.

Chairperson Anderson stated that he still has a problem with the Zoning Text Amendment and he cannot support it.

Commissioner Lew stated that she does not understand the findings for the Zoning Text Amendment and asked where are the findings.

Chairperson Anderson stated that there are no findings and it is a way to avoid having the Variance process by allowing it to happen with a Use Permit. Chairperson Anderson stated that the rationale is good, that this is the last affordable housing development in the zoning district and it will only apply to the CSMU district. Chairperson Anderson asked if that is correct.

Ms. Malloy replied that is correct.

Chairperson Anderson stated that he is still uncomfortable with a rule that says they don't have to follow any rules.

Commissioner Lew suggested that for every exception that the applicant is asking for this project a finding should be developed or provided.

Chairperson Anderson stated that if they could have made findings they probably would have done a Variance.

Commissioner Lew stated that she knows they are making trade-offs but they are not telling the commission what they are and how they measured it and how it is beneficial to the City.

Commissioner Lew referred to the two million dollar savings and suggested a finding could be that the exception to the 1.5 parking standard is beneficial to the City because it results in a savings of two million dollars. Commissioner Lew stated that they need to be told about these things.

Commissioner Singh asked how will the commission know how much is being saved by not undergrounding the parking structure.

Ms. Campbell stated that they based their information on parking studies that show the financial difference between building at grade and underground.

Ms. Campbell stated that because affordable housing developers are non-profits it is very difficult when you build a 100% affordable housing project and that is why the State has special provisions for affordable housing. Ms. Campbell stated that staff wanted to facilitate the development of affordable housing in this project.

Chairperson Anderson stated that he does not want to see a developer say they are an affordable housing developer and get these benefits.

Mr. Rodriguez stated that this is subject to the Use Permit process so it is not as if they request and it is automatically granted. Mr. Rodriguez stated that they have to come to the commission for approval so there would have to be an analysis of the exceptions they are asking for and what is the rationale for granting that exception and if the commission did not agree with that.

Chairperson Anderson stated that this is ripe for unfairness; it is ripe for the old boy networks where you can treat one application one way and treat another application a different way with the same rules.

Mr. Rodriguez stated that you are the board that controls that.

Chairperson Anderson stated that he is not comfortable with the process.

Ms. Malloy stated that these additional exceptions such as building height, setback or variance from the design criteria established in this chapter can be provided; provided that the development offers high quality architectural and pedestrian environment amenities. Ms. Malloy stated that is the criteria that they are looking at when they are evaluating a project. Ms. Malloy asked if providing solar panels on the roof of the parking garage is an appropriate way to meet the cover and enclosed requirement. Ms. Malloy stated that staff felt that it met the intent. Ms. Malloy stated that when they asked for on-street loading, staff felt that request would be easily accommodated because there would be passenger loading as well as trash loading and they would be very flexible locations identified at the street curb. Ms. Malloy noted that there is no setback requirement in the zoning code. Ms. Malloy stated that the design criteria for the Barry Swenson project did recommend a three foot setback. Ms. Malloy stated that while the project does not meet the three foot setback it does provide a ten foot deep arcade along the sidewalk which staff felt was a very nice amenity for pedestrians. Ms. Malloy noted that the commission did not seem to have a problem with the height standard. Ms. Malloy replied that she understands that the commission has concerns about the storage requirements.

Ms. Malloy stated that the valuation for this Use Permit and these exceptions go back to the quality of the architecture, the quality of the pedestrian environment and what is being provided to the district. Ms. Malloy stated that the General Plan does a very good job of laying out what is the City's vision and staff felt that this project did a good job of addressing that vision and bringing affordable housing which is a no profit endeavor to the community. Ms. Malloy stated that it is with that recommendation that staff urges you to consider the text amendment and the Use Permit.

Chairperson Anderson stated that is the problem that he is having. Chairperson Anderson agrees with everything that Ms. Malloy just said but the text amendment adds one more line that says "exceptions to other developments" which means every other development standard can be excepted. Chairperson Anderson stated that it goes beyond just the exceptions already noted and every development standard in the chapter can be excepted, which means they don't have to do any of it. Chairperson Anderson stated that is what he is opposed to.

Ms. Malloy asked if the commission wants to continue the text amendment and talk about what changes should be brought back.

Chairperson Anderson replied that as it is he would not vote for this text amendment.

Mr. Rodriguez asked if he wants to see specific language or specific exceptions.

Chairperson Anderson replied that he wants to see just a few exceptions not the entire standard.

Ms. Malloy suggested that they could change the language this evening so that would be acceptable to the commission.

Ms. Malloy referred to Section 18.38.190 a.1 and suggested changing it to read "except affordable housing developments may be parked at 1.3 parking stalls per unit and may not be enclosed". Ms. Malloy stated that they can be covered but do not have to be enclosed.

Ms. Malloy referred to Section 18.38.250, Review, and changed the last sentence to read “exceptions to other development standards, including off-street loading, residential storage, bicycle parking location and wall, fences and hedges, also may be approved as incentives for affordable housing developments”.

Chairperson Anderson stated his opposition to this because it has “other including” which means there are more.

Ms. Malloy changed it to read “exceptions to the following development standards may also be approved as incentives for affordable housing developments; off-street loading, residential storage, bicycle parking locations and walls, fences and hedges”.

Chairperson Anderson stated that Commissioner Lew is going to want to know what the incentives are.

Mr. Rodriguez stated that the incentives would have to be brought to the commission for approval.

Commissioner Lew wants the exception made into two statements; one dealing with the exceptions and the other dealing with the incentives.

Commissioner Lew stated that we are giving away exceptions and incentives and where is the benefit to the City.

Ms. Malloy stated that these are incentives for the affordable housing developer.

Commissioner Lew asked where are the benefits to the City.

Mr. Rodriguez replied that the exceptions that are provided in the first sentence have nothing to do with affordable housing projects but it has to do with high quality architectural and pedestrian environments. Mr. Rodriguez stated the second part of the sentence has to do with exceptions that are provided to affordable housing projects as incentives to develop in Union City. Mr. Rodriguez stated the benefit you are getting is affordable housing and the incentives that you are providing are relaxation of some of the design standards.

Commissioner Lew wants the exceptions limited to the four already identified.

Chairperson Anderson stated that he does not want all the development standards available for exception, he wants them limited.

Ms. Malloy stated that they are limited to the four exceptions already identified.

Mr. DeLeon stated that they are willing to do the 200 cubic feet for this project.

Ms. Malloy proposed removing the word “incentive” as that seems to be generating the most difficulty.

Ms. Malloy read back the changes to the proposed text amendment:

18.30.190 - “. . . for rental units provide 1.5 covered and enclosed parking stalls for each unit, except affordable housing developments may be parked at 1.3 parking stalls per unit and may not be enclosed.”

18.38.250 - “. . .exceptions to the following development standards may be approved for affordable housing developments; off-street loading, bicycle parking location, and walls, fences and hedges.”

Ms. Campbell read back the changes to the conditions of approval for the Use Permit and Site Development Review:

- Change condition #21 to read “prior to issuance of a certificate of occupancy”.
- Change condition #48 to read “a soils report shall provided for each building foundation”.
- Change condition #49 to read “prior to requesting a foundation inspection from the City, the applicant shall direct the geotechnical engineer or civil engineer to prepare the soil investigation to provide a field report in writing which shall state. . .”
- Change condition #51to read similar to condition #49.
- Combine condition #80 with condition #119.
- Change the period to a comma in condition #106a.
- Add wording to condition #115 “the site owner and/or operator is responsible for regularly. . .”
- Add the desk items and renumber the conditions of approval accordingly.
- Delete condition #18.
- Correct the findings in the resolution.
- Add a condition that the applicant shall add back no less than five units to the plans.

Commissioner Lew made a motion to recommend approval of Zoning Text Amendment AT-07-08, Use Permit UP-11-08 and Site Development Review SD-04-08 to the City Council, making findings 1 - 14, with modified conditions of approval and adopt a resolution confirming this action.

Commissioner Singh seconded.

AYES	5 (Anderson, Lew, Gonzales, Panlilio, Singh)
NOES	0
ABSTAIN	0
ABSENT	0

**VI. SUPPLEMENTAL STAFF REPORTS:**

- A. **CONTINUED REPORTS:** None.
- B. **NEW REPORTS:** None.

**VII. REDEVELOPMENT AND ECONOMIC DEVELOPMENT REPORTS:**

**VIII. COMMISSION MATTERS:**

- A. Follow-up on Planning Commission referrals to the City Council.
- B. Upcoming applications for the Planning Commission meeting for January 22, 2009.

**IX. GOOD OF THE ORDER:**

Commissioner Lew asked that the commissioners be invited to the public meetings that held for projects that will be coming to the Planning Commission.

Ms. Malloy replied that it should not be a problem as long as the commissioners do not discuss business in violation of the Brown Act.

Ms. Malloy stated that the EIR for the East-West connector has been released and this will be noticed to the City Council. Ms. Malloy stated that there will be a public meeting on January 14<sup>th</sup> if the commissioners are interested in attending.

Ms. Campbell stated that there may be an opportunity for additional training for the Planning Commissioners and asked if there are any topics that they might be interested in.

Chairperson Anderson stated that this sounds like a good idea because there are many new members on the commission and would like to see training on an approach to reviewing development applications.

**X.     ADJOURNMENT:** 11:05 p.m.

**APPROVED:**

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**TIKISA ANDERSON, CHAIRPERSON**

**ATTEST:**

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**JOAN MALLOY, SECRETARY**