

## **PIEDMONT PLANNING COMMISSION**

### **Regular Meeting Minutes for Monday November 10, 2008**

A Regular Session of the Piedmont Planning Commission was held November 10, 2008, in the City Hall Council Chambers at 120 Vista Avenue. In accordance with Government Code Section 54954.2(a) the agenda for this meeting was posted for public inspection on October 31, 2008.

#### **CALL TO ORDER**

Chairman Stehr called the meeting to order at 5:05 p.m. She announced that the Commission will hold a special meeting on November 13 to discuss the General Plan Update and invited interested residents to attend.

#### **ROLL CALL**

Present: Commissioners Jonathan Levine, Jim Kellogg, Melanie Robertston, Bobbe Stehr, Clark Thiel and Alternate Commissioner Michael Henn

Staff: City Planner Kate Black, City Attorney George Peyton, Planning Technician Sylvia Toruno and Recording Secretary Chris Harbert

City Council Liaison: Councilmember John Chiang

#### **CONSENT CALENDAR**

The following Resolutions were approved under one vote by the Commission:

##### **Variance 235 Palm Drive**

##### **Resolution 272-V-08**

WHEREAS, Mr. Paul Hennessey and Ms. Susan Dague are requesting permission to construct new stairs and a new gas meter enclosure in the front yard of the property located at 235 Palm Drive, Piedmont, California, which construction requires variance; and

WHEREAS, variances from the requirements of Chapter 17 of the Piedmont City Code are necessary in order to construct within the front 20 ft. setback and to exceed the City's structure coverage limit; and

WHEREAS, after reviewing the application, plans and any and all testimony and documentation submitted in connection with such application, and after having visited subject property, the Piedmont Planning Commission makes the following findings:

1. The underlying lot and existing improvements present unusual physical circumstances, including but not limited to the fact that the existing stair and front entry are already located within the front setback. Because of these circumstances, strictly applying the terms of this chapter would keep the property from being used in the same manner as other properties in the zone which conform to the zoning requirements.
2. The variances are compatible with the immediately surrounding neighborhood and the public welfare because the proposed improvements to the stair and entry do not materially change the existing mass and bulk within the setback, with the small exception of

the enclosure of the gas meter. There is no impact on neighbor view, light or privacy.

3. Accomplishing the improvement without variance would cause unreasonable hardship in planning, design, or construction because improvements to the home's front stair and entry are not possible without variance – the variance is a pre-existing situation.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the variance application of Mr. Hennessey and Ms. Dague for the above variances at 235 Palm Drive, Piedmont, California, in accordance with the plans and specifications on file with the City.

RESOLVED FURTHER, that the approval of the Planning Commission/City Council and any conditions of that approval shall not extend to any particulars set forth in the documents submitted for the project which are inconsistent with or in violation of any applicable law, including but not limited to Chapters 5 and 17 of the City Code, nor does the approval extend to matters not set forth, or inadequately represented, in submitted documents (whether or not consistent with applicable law). The City reserves the right to require compliance with applicable laws and to attach conditions after initial approval is given, if noncompliance is discovered or additional conditions are considered necessary and appropriate in light of Commission/Council findings.

**Design Review  
235 Palm Drive**

**Resolution 272-DR-08**

WHEREAS, Mr. Paul Hennessey and Ms. Susan Dague are requesting permission to construct new stairs and a new gas meter enclosure in the front yard of the property located at 235 Palm Drive, Piedmont, California, which construction requires design review; and

WHEREAS, after reviewing the application, plans and any and all testimony and documentation submitted in connection with such application, and after having visited subject property, the Piedmont Planning Commission finds that the proposal conforms with the criteria and standards of Section 17.20.9 of the Piedmont City Code:

1. The exterior design elements (including but not limited to height, bulk, area openings, breaks in the façade, line and pitch of the roof, materials, arrangements of structures on the parcel, and concealment of mechanical and electrical equipment) are aesthetically pleasing as a whole and harmonious with existing and proposed neighborhood development in that the proposed improvements comply with Design Review Guidelines II-1, II-2, II-3 and II-3(b).
2. The design is appropriate, considering its effect on neighboring properties' existing views, privacy and access to direct and indirect light because there is no impact. The proposal complies with Design Review Guidelines II-3(a) and II-6.
3. The safety of residents, pedestrians, and vehicle occupants and the free flow of vehicular traffic are not adversely affected, considering the circulation pattern, parking layout and points of ingress and egress because there is no change in existing circulation patterns. The project complies with Design Review Guideline II-7.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review application of Mr. Hennessey and Ms. Dague for construction at 235 Palm Drive, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following condition:

- The approved plans are those submitted on September 23, with additional information submitted on September 30 and October 28, 2008, after neighbors were notified of the project and the plans were available for public review;

RESOLVED FURTHER, that the approval of the Planning Commission/City Council and any conditions of that approval shall not extend to any particulars set forth in the documents submitted for the project which are inconsistent with or in violation of any applicable law, including but not limited to Chapters 5 and 17 of the City Code, nor does the approval extend to matters not set forth, or inadequately represented, in submitted documents (whether or not consistent with applicable law). The City reserves the right to require compliance with applicable laws and to attach conditions after initial approval is given, if noncompliance is discovered or additional conditions are considered necessary and appropriate in light of Commission/Council findings.

**Conditional Use Permit  
1333 Grand Avenue**

**Resolution 290-CUP-08**

WHEREAS, Ms. Julie Archibald, on behalf of Curves, is requesting a Conditional Use Permit to continue to operate an existing cardio and strength training fitness facility at 1333 Grand Avenue, Piedmont, California, and;

WHEREAS, the Piedmont Planning Commission has reviewed the application, the staff report, and any and all other documentation and testimony submitted in connection with the application and has visited the subject property;

The Piedmont Planning Commission makes the following findings:

1. The use is of benefit to Piedmont residents because it is already a successful on-going business serving Piedmont residents.
2. The use will be properly related to other land uses and transportation and service facilities in the vicinity because it has been operating for years at the site and is well integrated in the neighborhood.
3. 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. The proposed increase in hours of operation is minimal and any impact, if any, on the neighborhood will be insignificant.
4. The use will not be contrary to the standards established for the zone in which it is to be located. There is no change in the existing use.
5. The use will not contribute to a substantial increase in the amount of noise or traffic in the surrounding area. The increase in hours of operation is very minimal.

6. 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. The use is already an on-going business that encourages healthy living.

7. 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.

8. 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.

RESOLVED, that in consideration of the findings and facts set forth above, the Piedmont Planning Commission recommends approval by the City Council of the application for a conditional use permit by Ms. Archibald, on behalf of Curves, for property located at 1333 Grand Avenue, Piedmont, subject to the following conditions:

1. The term of the Conditional Use Permit shall be 5 years;
2. The applicant shall require employees to park on Linda or Sunnyside Avenue and not in front of the building or in the rear parking lot;
3. The applicant shall encourage customers to use the rear parking lot between the hours of 6:30 a.m. to 8:00 a.m. and 5:00 p.m. to 7:00 p.m.;
4. The building owner is requested to determine if his tenants are parking in front of Grand Avenue residences and if so, to encourage them to park elsewhere.

Moved by Thiel, Seconded by Levine

Ayes: Levine, Kellogg, Robertson, Stehr, Thiel

Noes: None

Absent: None

## **PUBLIC FORUM**

There were no speakers for the public forum.

## **APPROVAL OF MINUTES**

### **Resolution 25-PL-08**

RESOLVED, that the Planning Commission approves as submitted its meeting minutes of October 13, 2008.

Moved by Kellogg, Seconded by Robertson

Ayes: Levine, Kellogg, Robertson, Stehr

Noes: None

Abstain: Thiel

Absent: None

## REGULAR CALENDAR

The Commission considered the following items of regular business:

### **New House Design Review and Fence Design Review 53 Cambrian Avenue**

Mr. and Mrs. Ben O'Neil are requesting design review and fence design review to construct a new 4,238 sq. ft. 4-bedroom house with dining room, kitchen/breakfast area, pantry, laundry room, mud room, storage rooms, play/media room, two offices, 3 full-baths, 2 half-baths and a 2-car garage. A front balcony and skylights are proposed. Site improvements include walls and retaining walls, walkways, a rear terrace, a rear spa, and new landscaping (including new trees and the removal of some existing trees). A new stone wall with stucco posts and an entry gate are proposed at the front of the property and the front yard is proposed to be raised and somewhat leveled so that the wall will function as a retaining wall. This application was continued from the October meeting and plans have been revised from the plans reviewed in October.

Written notice was provided to neighbors. **Three affirmative, five negative response forms** were received. **Correspondence** was received from: David Bowie, Nov. 5; Robert Pennell, Nov. 6; Susan & Jerome Herrick, Nov. 5; Caryl & Bryon James, Nov. 5

At the Chair's request, the City Attorney responded to legal issues raised by the applicant's attorney (David Bowie) in his letter of November 5 regarding proposed conditions of project approval. As a general matter, he noted that the same or similar conditions have been imposed on proposed development projects in Piedmont since 2000. With regard to particulars raised in Mr. Bowie's letter, the City Attorney specifically outlined the reasons he disagreed with Mr. Bowie's legal challenge of the appropriateness of proposed Condition #21. However, the City Attorney recommended that during discussion of the application, the Commission consider whether or not to include the following, additional subsection to Condition 21 if the project is ultimately approved:

d. The Applicant's soils engineer shall investigate the possible subsidence at the residence located at 6 Croydon Circle, which has been reported by the owner of that residence, and such soils engineer shall provide a written report to the Director of Public Works containing his professional opinion as to whether there is any possibility that this or any other evidence would indicate subsidence that could damage 6 Croydon Circle or any neighboring property. If such soils engineer renders a written report stating that there is very little, if any, possibility of such subsidence, and particularly that there is very little, if any, chance of damage to 6 Croydon Circle or any neighboring property that may be caused by subsidence involving excavation or construction at 53 Cambrian Way, then the Director of Public Works in his discretion may reduce or totally waive the amount required in Condition 21.

**Public testimony** was received from:

Michaela Cosares, the applicant's daughter, advised the Commission of her excitement in becoming a resident of the Cambrian neighborhood.

Ben O'Neil summarized the changes in the proposed design made in response to the October discussion of his proposal as well as neighborhood meetings.

Robert Pennell, Project Architect, displayed two models of the proposed design to provide a better visual understanding of the new home's massing relationship to adjacent residences and the lot as well as show design articulation details. He also described changes in the design intended to reduce building height and massing and better integrate the new home into the topography of the lot. He also responded to questions regarding grade changes to the front and rear portions of the lot as well as tree preservation, pruning and replacement.

Alexis Hacker, St. James Homes Association Board Member, summarized some of the association members' concerns regarding the plans and the extent of building height and massing reductions.

David Bowie, Attorney for the Applicant, referenced his November 5 letter in outlining his concerns regarding several of the project's proposed conditions. In particular, he emphasized that unlike the Lexford project, the O'Neil's proposal does not involve significant excavation (only a modest cut and fill) and thus does not warrant the requirements of Condition #21. However, if Condition #21 is retained, he supported the inclusion of the City Attorney's recommended subsection d. Mr. Bowie also reiterated his objections to Conditions #6, #8, #9, #12 and #19 as being unjustified, unnecessary and possibly illegal.

Thomas Cundey, Applicant's Soils Engineer, described the results of site test borings and noted that his final written report will be completed this week. He stated his professional opinion that there is no significant risk that project excavation will impact or damage the neighboring homes at 6 and 8 Croydon Circle. In response to Commission questions, he stated that he does not carry Errors and Omissions insurance nor it is likely that he could obtain \$1 Million in insurance coverage – the premiums would be too high and in any event such insurance is rarely available because the geo-technical profession is considered a high risk business.

David Gottfried, Green Building Consultant, explained the LEED rating criteria and noted that the proposed home will achieve the highest LEED rating of "Platinum." He urged the Commission to approve this *showcase* home for Piedmont.

Tom Hannigan, Kathy Kelleher, and Randall & Jan Kessler all urged project approval, noting that (1) the new home will increase neighborhood property values and City tax revenue; (2) has been redesigned in response to neighbor and Commission requests; (3) the proposed design is attractive and the LEED rating of the project will benefit the community, environment and planet; (4) the existing lot has been a vacant eyesore for years; and (5) the proposed home's interesting architecture will enhance community aesthetics.

Allen Pastrow voiced support of the revisions made to the original submittal but still felt that the proposed home was too massive for lot in terms of building height and bulk.

Jerry Herrick also agreed that the revised design was an improvement over the original submittal. However, he requested that the proposed landscaping plan be revised to require the planting of three trees to better preserve his privacy. He noted his willingness to adjust the lot line between the two properties to eliminate an existing 33 ft. slot.

Byron & Caryl James reiterated their October comments that the proposed home will impact their property in terms of loss of privacy, daylight glare and nighttime illumination from the large expanse of glass windows and doors as well as possible soil slippage due to rear yard excavation. They requested that a new soils engineer be retained to address their specific concerns re rear yard soils slippage and any project approval specifically condition their right to approve and accept the soils report findings, conclusions and recommendations.

Doug Brian supported application approval, noting that the “green building” concepts of the proposed design will inspire other Piedmont residents to improve the energy and water efficiencies of their properties.

The Commission disagreed with Mr. Bowie’s challenges to the proposed project conditions, stressing that the conditions are in the best interest of the City and Piedmont residents and have a direct nexus to the project. The Commission also disagreed with the proposed additional subsection recommendation of the City Attorney, believing that it could shift liability to the City and is unnecessary given that Condition #23 grants discretion to the Public Works Director and City Attorney to modify financial conditions of approval if so warranted.

As to design issues, the Commission agreed that the design of the new home was wonderful, the LEED objectives admirable and the proposed contemporary architectural style is acceptable for the neighborhood. However, the Commission majority felt that this particular design was neither appropriate nor the right design for the specific characteristics of the lot. The Commission majority reiterated its October comments that the design failed to be incorporated into the hillside topography of the lot, imposed too much massing on the streetscape, was sited too high on the lot, failed to mitigate the impacts of a “wall of glass” on neighboring property in terms of privacy loss and light spill and did not represent a significant revision of the previous design. Chairman Stehr felt that the redesign was responsive to Commission requests, the siting was appropriate given the “bowl” characteristics of the property and that the impacts from the rear expanse of glass could be mitigated with vegetation screening.

**Resolution 239-DR-08**

WHEREAS, Mr. and Mrs. Ben O’Neil are requesting permission to construct a new 4,238 sq. ft. 4-bedroom house with dining room, kitchen/breakfast area, pantry, laundry room, mud room, storage rooms, play/media room, two offices, 3 full-baths, 2 half-baths and a 2-car garage. A front balcony and skylights are proposed. Site improvements include walls and retaining walls, walkways, a rear

terrace, a rear spa, and new landscaping (including new trees and the removal of some existing trees). A new stone wall with stucco posts and an entry gate are proposed at the front of the property and the front yard is proposed to be raised and somewhat leveled so that the wall will function as a retaining wall located at 53 Cambrian Avenue, Piedmont, California, which construction requires design review; and

WHEREAS, after reviewing the application, plans and any and all testimony and documentation submitted in connection with such application, and after having visited subject property, the Piedmont Planning Commission finds that the proposal does not conform with the criteria and standards of Section 17.20.9 of the Piedmont City Code:

1. The design as proposed fails to comply with City Design Review Guidelines I-1, I-5, I-6, I-7, I-9. In particular, its height, bulk and arrangement of structures on the parcel are not aesthetically pleasing as a whole. The distance between the new home and adjacent residences is not reasonable given the topography of the lot and existing neighborhood patterns.
2. The proposed new multi-level structure has not been designed in a way that reasonably minimizes view and light impacts on neighboring properties (as defined in Section 17.2.70), including consideration of the location of the new construction, the height of the construction and the use of building materials. The proposed home has not been designed in a manner to reduce its visual bulk or preserve the privacy of neighboring residence. In particular, the proposed rear windows fail to preserve the privacy of residents on contiguous parcels.
3. The size and height of the structure is not commensurate with its placement on the lot given its topography and is not in keeping with existing neighborhood pattern.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission denies, without prejudice, the design review application of Mr. and Mrs. O'Neil for construction at 53 Cambrian Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City.

Moved by Levine, Seconded by Thiel

Ayes: Kellogg, Levine, Robertson, Thiel

Noes: Stehr

Absent: None

The Commission recessed for dinner at 7:20 p.m. and reconvened at 7:55 p.m.

**New House Variance  
And Design Review  
198 Maxwellton Road**

Mr. and Mrs. Cory Johnson are requesting variance and design review to demolish the existing 1,333 sq. ft. house and construct a new 2-story residence over a basement and 2-car garage. The new house is proposed to be 2,890 sq. ft. with 4 bedrooms, 2-1/2 baths, a living, dining and kitchen area, laundry room, large unfinished basement and attached 2-car garage. A small upper level balcony on the front elevation and a large deck on the western side of the house at the main level is proposed. A retaining wall and fence, ranging in height up to 13'5" are proposed near the western property line to accommodate grade changes. The requested variance is from Section 17.10.6 to allow



the eaves of the new house to extend to within 17'8" of the front property line and the new raised front entry terrace to extend to 13'2" of the front property line in lieu of the code required minimum of a 20 ft. front yard setback.

Written notice was provided to neighbors. **Two affirmative response and one conditional response forms** were received. **Correspondence** was received from: William Wikander, Sept. 15; Robert Kelly, Oct. 30

**Public testimony** was received from:

Cory Johnson stated that his home is the smallest in the neighborhood and has extensive foundation, plumbing and electrical problems. Because of which, it is more economical to demolish the old house and build a new one better suited to the needs of his growing family rather than attempt to renovate the existing structure. Starting over also provides an opportunity to stabilize the cliff in conjunction with an agreement with Mountain View Cemetery. He explained how the proposed home was specifically sited to preserve or maximize neighbor view corridors.

Richard Albert urged application approval, agreeing that the applicant has been cooperative in preserving neighbor views.

Priscilla Carson also supported application approval, noting that she will experience some view loss (approximately 25%) but is willing to accept this loss in exchange for supporting her neighbor and per an agreement with the Johnsons that some trees will be removed to improve her pocket views of the San Francisco skyline. However, she wanted the official record to indicate that she has suffered view loss so that this can be taken into account if any future applications would further degrade her views.

Robert Kelly, Project Architect, summarized his client's efforts in designing the home so as to have minimum impact on adjacent neighbors' views, minimize its streetscape appearance and bulk, and retain the "First Bay Tradition" architectural style of the area. He also felt that many of the financially related conditions of approval were too burdensome and inefficient. In response to Commission questions, he noted that the garage cannot be reoriented to eliminate the variance without significantly impacting its ingress/egress as well as neighbor views.

The Commission supported the proposed design, agreeing that it is a well-crafted, quality project on a very difficult lot. The Commission further agreed that variance approval was justified in light of the lot's topography and the desirability of preserving neighbor views. The Commission noted that the extent of setback encroachment was minimal – garage eave overhangs only. However, the Commission objected to the proposed large expanse of underpinning screening and suggested as an alternative that portions of the deck be cantilevered so as to minimize the amount of underpinning.

**Resolution 277-V-08**

WHEREAS, Mr. and Mrs. Cory Johnson are requesting permission to construct demolish the existing 1,333 sq. ft. house and construct a new 2-story residence over a basement and 2-car garage. The new house is proposed to be 2,890 sq. ft. with 4 bedrooms, 2-1/2 baths, a living, dining and kitchen area, laundry room, large unfinished basement and attached 2-car garage. A small upper level balcony on the front elevation and a large deck on the western side of the house at the main level is proposed. A retaining wall and fence, ranging in height up to 13'5" are proposed near the western property line to accommodate grade changes located at 198 Maxwellton Road, Piedmont, California, which construction requires variance; and

WHEREAS, a variance from the requirements of Chapter 17 of the Piedmont City Code is necessary in order to construct within the front yard setback; and

WHEREAS, after reviewing the application, plans and any and all testimony and documentation submitted in connection with such application, and after having visited subject property, the Piedmont Planning Commission makes the following findings:

1. The underlying lot and existing improvements present unusual physical circumstances, including but not limited to the fact that the property is partially in Oakland and partially in Piedmont, located adjacent to a steep, unstable cliff and within significant view lines of neighbors. Because of these circumstances, strictly applying the terms of this chapter would keep the property from being used in the same manner as other properties in the zone which conform to the zoning requirements.
2. The variance is compatible with the immediately surrounding neighborhood and the public welfare because it allows significant views of neighboring properties to be preserved and facilitates usable ingress/egress to the garage. The requested variance is consistent with existing neighborhood standards of development.
3. Accomplishing the improvement without a variance would cause unreasonable hardship in planning, design, or construction for the reasons cited above. The proposed design does not impact neighbor safety, privacy or light.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the variance application of Mr. and Mrs. Johnson for the above variance at 198 Maxwellton Road, Piedmont, California, in accordance with the plans and specifications on file with the City.

RESOLVED FURTHER, that the approval of the Planning Commission/City Council and any conditions of that approval shall not extend to any particulars set forth in the documents submitted for the project which are inconsistent with or in violation of any applicable law, including but not limited to Chapters 5 and 17 of the City Code, nor does the approval extend to matters not set forth, or inadequately represented, in submitted documents (whether or not consistent with applicable law). The City reserves the right to require compliance with applicable laws and to attach conditions after initial approval is given,

if noncompliance is discovered or additional conditions are considered necessary and appropriate in light of Commission/Council findings.

Moved by Thiel, Seconded by Robertson

Ayes: Kellogg, Levine, Robertson, Stehr, Thiel

Noes: None

Absent: None

**Resolution 277-DR-08**

WHEREAS, Mr. and Mrs. Cory Johnson are requesting permission to construct demolish the existing 1,333 sq. ft. house and construct a new 2-story residence over a basement and 2-car garage. The new house is proposed to be 2,890 sq. ft. with 4 bedrooms, 2-1/2 baths, a living, dining and kitchen area, laundry room, large unfinished basement and attached 2-car garage. A small upper level balcony on the front elevation and a large deck on the western side of the house at the main level is proposed. A retaining wall and fence, ranging in height up to 13'5" are proposed near the western property line to accommodate grade changes located at 198 Maxwellton Road, Piedmont, California, which construction requires design review; and

WHEREAS, after reviewing the application, plans and any and all testimony and documentation submitted in connection with such application, and after having visited subject property, the Piedmont Planning Commission finds that the proposal conforms with the criteria and standards of Section 17.20.9 of the Piedmont City Code:

1. The exterior design elements are aesthetically pleasing as a whole and harmonious with existing and proposed neighborhood development. These elements include but are not limited to: height, bulk, area openings, breaks in the façade, line and pitch of the roof, materials, arrangements of structures on the parcel, and concealment of mechanical and electrical equipment. The distance between the proposed new multi-level structure and adjacent residences is reasonable and appropriate due to the existing topography and neighborhood development pattern. Upper level setbacks greater than the setbacks required for the lower level have been considered and are/are not necessary to reduce losses of ambient and reflected light. The proposed improvements are consistent with the neighborhood development pattern and with the topography of the lot. The project complies with Design Review Guidelines I-1 in terms of its architectural compatibility with the neighborhood, III-1 in terms of improving garage usability and access over existing conditions and IV-1 in terms of providing retaining walls that are consistent in character with existing neighborhood conditions.

2. The proposed new multi-level structure has been designed in a way that reasonably minimizes view and light impacts on neighboring properties (as defined in Section 17.2.70), including consideration of the location of the new construction, lowering the height of the addition, expansions within the existing building envelope (with or without excavation), lower level excavation for new multi-level structures, and/or changing the roof slope or ridge direction. The proposed structure's massing and location is designed so as to preserve the significant views of neighbors.

3. The size and height of the addition is commensurate with the size of the lot (excluding the portions of the lot that cannot reasonably be built on), and is in keeping with the existing neighborhood development pattern. The structure does not require any variances except a front yard setback encroachment to afford access and usability of the garage.

4. The safety of residents, pedestrians, and vehicle occupants and the free flow of vehicular traffic are not adversely affected, considering the circulation pattern, parking layout and points of ingress and egress. In accordance with Sections 17.16.1 and 17.22.1, the existing or proposed on-site parking is appropriate to the size of the new multi-level structure or addition, and additional parking is not required to prevent unreasonable short and/or long term parking impacts on the neighborhood. The new driveway is similar to the existing and enables vehicles to pull in off of the roadway before entering the garage.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review application of Mr. and Mrs. Johnson for construction at 198 Maxwellton Road, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

1. **Construction Management Plan.** A comprehensive Construction Management Plan shall be developed by the applicant. The Construction Management Plan shall address noise, vibrations, traffic control, parking, debris removal, dust control, sanitary facilities, and other potential construction impacts, as well as other details involving the means and methods of completing the Project including the construction route. The City Building Official shall have the authority to require modifications and amendments to the Construction Management Plan as deemed necessary throughout the course of the Project and until the final issuance of a Certificate of Occupancy.

2. **Construction Completion Schedule.** Work on the Project, once commenced, shall be promptly executed with continuous good faith and reasonable progress. Since timely completion of this Project is of the essence, the Applicant shall submit for approval a Construction Completion Schedule, which will specify, in detail, the duration and percentage complete of each phase.

a. The Construction Completion Schedule with associated construction values for each benchmark shall set forth completion dates for the following benchmarks:

- i. Completion of Excavation;
- ii. Completion of Retaining Walls;
- iii. Completion of Foundation;
- iv. Completion of Rough Framing;
- v. Completion of Electrical;
- vi. Completion of Plumbing;
- vii. Completion of Mechanical;
- viii. Completion of Fire Sprinklers;
- ix. Completion of Home;
- x. Completion of Hardscaping and Landscaping;

and of any further construction benchmarks and conditions of occupancy as may be determined by the Director of Public Works.

b. The Director of Public Works shall, before the Project commences, make a determination as to the completion dates applicable to the Project and such determination shall constitute the "Approved Schedule" and be binding on the Applicant. The City may, at the Applicant's sole cost, engage the services of a consultant to review the Applicant's proposed Construction Completion Schedule and, to the extent the period allocated for any work appears unjustifiable, recommend to the Director of Public Works a reasonable completion date for any benchmark.

c. If the work for any specific benchmark has not been completed within 90 days after the completion date set forth in the Approved Schedule, and the delay in completion has not been caused by force majeure, the Director of Public Works shall have the option at any time thereafter to make claim against the Applicant's Performance Security in order to complete such benchmark.

3. **Geotechnical Report and Review.** The Applicant shall submit a report prepared by a geotechnical engineer of the Applicant's choice that fully assesses the existing site conditions, and addresses all issues regarding excavation and grading, foundations and their construction, drainage, retaining wall systems, periodic on-site observations, and other related items involving the Project.

a. **Peer Review.** The City, at the Applicant's sole expense, shall retain an independent geotechnical consultant to perform a peer-review of the Applicant's geotechnical report and advise the City in connection with the Applicant's proposals. The City Engineer shall select this independent geotechnical consultant, whose services shall be provided for the sole benefit of the City and whose reports and recommendations can be relied upon only by the City. Said independent geotechnical consultant shall also review the building plans during the permit approval process, and may provide periodic on-site observations during excavation and construction of the foundations as deemed necessary by the City Engineer.

4. **Foundation/Shoring/Excavation Plan.** The Applicant shall submit foundation, excavation, and shoring plans prepared by a structural engineer that fully address issues of site shoring, fencing and hillside security issues. Said plans shall not require any trespassing or intruding into neighboring properties, and shall militate against any subsidence or other damage to neighboring properties. Such plans shall incorporate as appropriate the recommendations of the Applicant's geotechnical engineer and the City's geotechnical consultant, and shall be subject to approval by the City Engineer and the Chief Building Official.

5. **Stormwater BMPs for Construction.** Applicant shall implement stormwater treatment Best Management Practices (BMPs) as well as Bay Area Stormwater Management Agencies Association's "Start at the Source" criteria for stormwater quality protection. City Staff may impose additional requirements involving the prevention of storm water pollution during construction and permanent drainage,

erosion and sediment control. These items will be reviewed as part of the Applicant's Construction Management Plan.

6. **City Facilities Security.** If the construction equipment and materials are proposed to occur on City streets, the Applicant shall provide a specific cash deposit, letter of credit, bank guarantee, bond, or other similar financial vehicle ("City Facilities Security") in the amount of \$100,000.00 as established by the Director of Public Works, to cover the cost of any damage to City property or facilities in any way caused by Applicant, Applicant's contractors or subcontractors, or any of their agents, employees or assigns, or others working for or on behalf of Applicant on this Project, and related in any way to the Project. The form and terms of such City Facilities Security shall be determined by the Director of Public Works after consultation with the Applicant.

a. To provide clear baseline information to assist in determining whether damage to the City's facilities has been caused by the Applicant or others working for or on behalf of Applicant on this Project, the City will document such facilities (including, without limitation, on streets and facilities along the approved construction route as specified in the Construction Management Plan to establish the baseline condition of such streets and facilities, and shall further re-document the streets as deemed appropriate after the Project commences until the Director of Public Works determines that further documentation is no longer warranted. As part of such documentation, the City may possibly hose or water down the streets to better emphasize any cracks or damage in the surface thereof. The Applicant shall be responsible for the full cost of all such documentation and related work, and shall reimburse the City therefore within 21 days after receiving written notification of the work performed and the amount to be reimbursed.

b. Proceeds from the City Facilities Security shall be payable to the City upon demand, conditioned solely on the Director of Public Works' certification on information and belief that all or any specified part of such proceeds are due and owing to the City. The City shall not be required to prove or otherwise establish in any way that such proceeds are required to compensate it for damages to City property or facilities, that Applicant is directly or indirectly responsible therefore, or any other prerequisites to the City's entitlement to collect such proceeds from the provided security.

7. **Performance Security.** The Applicant shall provide a specific cash deposit, letter of credit, bank guarantee, performance bond, or other similar financial vehicle ("Performance Security") to ensure full compliance with these Conditions of Approval and the completion of the full construction of the Project, including all site improvements and landscaping, in accordance with the plans approved by the City.

a. The Performance Security shall be in an amount to include all expected costs to complete the Project, plus 25% to cover cost escalation, unexpected expenditures and other contingencies. If, as the Project proceeds, the expected cost to complete the Project increases beyond the original estimate in the

opinion of the Director of Public Works, the City may require the Applicant to increase the amount of the Performance Security by such additional amount plus 25%, and Applicant shall provide City with written evidence of compliance within 15 working days after receiving written notice of the additional required amount. The City shall retain, at the Applicant's sole expense, an independent estimator to determine the total expected costs to complete the Project and any subsequent revisions thereto.

b. The Director of Public Works shall approve the form and amount of the Performance Security, which shall absolutely ensure completion of the entire Project. Performance under the Performance Security shall commence upon demand by the City, conditioned solely on the Director of Public Works' certification on information and belief that all or any specified part of such Performance Security is due and owing to the City. The City shall not be required to prove or otherwise establish in any way that Applicant is in default of any condition, covenant or restriction, or any other prerequisite to the City's entitlement to performance by the provided security.

c. The Performance Security shall not be released until the entire Project has an approved Final Inspection by the Chief Building Official, provided that if, in the judgment of the Director of Public Works, sufficient work has been completed according to the benchmarks and construction values as established under the Construction Completion Schedule, such Performance Security may be reduced to the extent the Director of Public Works in his sole discretion shall determine is appropriate.

8. **Consultant Cost Recovery.** As the City must, in order to accommodate the scope and nature of the Project proposed by the Applicant, retain independent consultants with specialized expertise, the Applicant shall, prior to issuance of the building permit, make a cash deposit with the City in the amount of \$5,000.00 to be used to pay for the fees and expenses of such City consultants, or in any way otherwise required to be expended by the City for professional assistance (other than City Staff), in conjunction with the Project, at the discretion of the Director of Public Works. If such cash deposit has been reduced to \$2,500.00 or less at any time, the Director of Public Works may require the Applicant to deposit additional funds to cover any further estimated fees and expenses associated with consultants retained by the City for the Applicant's Project. Any unexpended amounts shall be refunded to the Applicant within 90 days after the Project has an approved Final Inspection by the Chief Building Official.

9. **City Attorney Cost Recovery.** Due to the substantial additional commitment of City Attorney's time required to accommodate the scope and nature of the Project proposed by the Applicant, the Applicant shall, prior to commencement of construction, make a cash deposit with the City in the amount of \$5,000.00 to be used to offset time and expenses of the City Attorney relating to the Project. If such cash deposit has been reduced to \$2,500.00 or less at any time, the Director of Public Works may require the Applicant to deposit additional funds to cover any further estimated additional City

Attorney time and expenses. Any unused amounts shall be refunded to the Applicant within 90 days after the Project has an approved Final Inspection by the Chief Building Official.

10. **Property Insurance.** The Applicant shall purchase and maintain property insurance on an “all-risk” policy form, including builder’s risk, in the amount of the initial total expected costs to complete the Project, plus the value of subsequent modifications and revisions, comprising total value for the entire Project on a replacement cost basis without optional deductibles. Such property insurance shall include interests of the Applicant, its contractor, subcontractors and sub-subcontractors in the Project, and shall be maintained until the entire Project has been completed and has an approved Final Inspection by the Chief Building Official.

11. **Contractor’s General Liability Insurance.** The Applicant shall require all contractors and subcontractors performing work on the Project to maintain General Liability Insurance for protection from claims for damages because of bodily injury, including death, and claims for damages, other than to the contractor’s work itself, to property which may arise out of or result from the contractor’s operations. Such insurance shall be written for not less than \$1,000,000.00 per occurrence.

12. **Professional Liability Insurance.** The Applicant shall require its architect, any structural engineer, soils engineer, geotechnical engineer and other engineers and professional consultants retained to perform work relating to the Project to procure and maintain for a period of no fewer than 5 years after completion of the Project, professional liability insurance with coverage limits of no less than \$1,000,000.00 per claim.

13. **Insurance Cancellation Notice.** The Applicant shall require that all insurance policies obtained to satisfy any specific Condition of Approval provide the City with at least 10 days prior written notice from the insurance company of the cancellation of or change to any insurance coverage provided therein. Applicant shall immediately arrange for substitute insurance coverage to replace any such cancellation or change, subject to the approval of the City Attorney.

14. **Creditors’ Claims.** All security, funds or financial vehicles set forth in any of these Conditions of Approval shall be earmarked or dedicated so that they are not subject to creditors’ claims.

15. **CEQA Agreement.** The Applicant shall, pursuant to a form of agreement prepared by the City Attorney and executed by the Applicant, defend, at Applicant’s sole expense, indemnify and hold harmless the City of Piedmont, its elected and appointed officials, agents, officers and employees from and against any claim, demand, loss, liability, action or proceeding relating to, resulting from, or in connection with any determination, whether through its Planning Commission, City Council, City Staff, or otherwise, regarding applicability of the California Environmental Quality Act to the Applicant’s Project, including but not limited to any determination that a Categorical Exemption applies or that an Initial Study, a Negative



Declaration or an Environmental Impact Report is or is not required for the Project.

16. **C&D Compliance.** Compliance with Chapter 9 Article III of the Municipal Code, which governs the recycling of construction and demolition debris, is required for all phases of this project. This Project is eligible to participate in an incentive program in which the City will provide one-half the cost of debris boxes provided by the City's franchised waste hauler and used exclusively for the purpose of removing recyclable construction and demolition debris, subject to continued availability of funds.

17. **Modifications to Conditions.** Any bonds, financial vehicles, insurance requirements or related Conditions of Approval may be modified in a reasonable manner with the joint agreement of the Director of Public Works and the City Attorney, provided that such modified Conditions of Approval continue to satisfy the general intent of the Condition as originally set forth herein.

18. **Final Landscape Plan.** The Applicant shall provide a Final Landscape Plan that provides the irrigation system and complies with the provisions of Section 17.17.3 of the Municipal Code, and shall not propose plants near the driveway that could obscure visibility of pedestrians on the sidewalk or vehicles on the street from drivers backing out of the driveway or impact the existing views of neighbors. The plan shall also address issues related to mitigating the visual appearance of the deck supports. The Final Landscape Plan shall be subject to staff review and approval prior to the issuance of a building permit.

19. **Subsidence Security.** The Applicant acknowledges and agrees that all work on the Project may be immediately stopped by the City in the event of any unanticipated landslides, subsidence, creep, erosion or other geologic instability, and may not resume until the City Engineer is fully assured that no further subsidence or erosion will occur.

a. The Applicant shall provide a specific cash deposit, bond, letter of credit, bank guarantee or other similar financial vehicle ("Subsidence Security") in the amount of \$250,000.00 as determined by the Director of Public Works, to provide immediately available funds for responding to, stemming and/or remediating any landslides, subsidence, creep, erosion or other geologic instability that may occur on any neighboring properties and which is triggered or caused in any way by Applicant's excavation, construction or any other activity relating to the Project and not immediately and fully rectified by Applicant to the satisfaction of the Director of Public Works.

b. Proceeds from the Subsidence Security shall be payable to the City upon demand, conditioned solely on the Director of Public Works' certification on information and belief that all or any specified part of such proceeds are due and owing to the City. The City shall not be required to prove or otherwise establish in any way that such proceeds are required to respond to an incident of geologic instability, that Applicant is directly or indirectly

responsible therefore, or any other prerequisites to the City's entitlement to collect such proceeds from the provided security.

c. The form and terms of the Subsidence Security shall be determined by the Director of Public Works after consultation with the Applicant, and shall not be released until the entire Project has been completed and has an approved Final Inspection by the Chief Building Official.

20. **Approved Plan Set.** The approved plans are those submitted on October 29, 2008, after notices to neighbors were mailed and the application was available for public review.

21. **Neighboring Property Damage Security.** The Applicant shall obtain and maintain insurance or provide a bond letter of credit, bank guarantee or other similar financial vehicle ("Neighboring Property Damage Security"), as approved by the Director of Public Works to insure against or otherwise provide funds to repair any damage (including, without limitation, subsidence and erosion) to neighboring property on the other side of the eastern property line caused by any construction, excavation, and related work in any way related to the Project not immediately and fully rectified by the Applicant to the satisfaction of the Director of Public Works, .

a. Such Neighboring Property Damage Security shall specifically indicate that it covers damages to the above properties, shall be in the amount of no less than \$500,000.00 and shall incorporate any other conditions established by the Director of Public Works after consultation with the Applicant. No portion of this amount may be satisfied by other insurance or security required under these Conditions of Approval.

b. If the Director of Public Works determines that obtaining any particular insurance would be extremely difficult for Applicant due to its lack of availability even at an increased cost, the Director of Public Works may authorize an appropriate alternative method of providing equal protection to neighboring properties, such as partial coverage by Umbrella Insurance.

c. The Neighboring Property Damage Security shall allow for claims to be made for up to two years after the issuance of the Certificate of Occupancy on the Project.

22. **Double Trailer Truck Prohibition.** To reduce potential damage to the streets and to avoid traffic hazards on narrow curving city streets, no double trailers shall be used as part of the Project.

23. **Written Approvals.** Prior to the issuance of a building permit, the applicants shall provide a written approval from the owner or authorized representative of the Mountain View Cemetery and any other property that has modifications proposed for it resulting from the proposed construction associated with the construction of the new residence at 198 Maxwellton Road, including but not limited to, changes in grade and retaining walls. Such written approval shall specifically reference plans that show the modifications.

24. **Deck Supports.** The deck support system shall be redesigned to improve and minimize the amount of underpinning screening required. Said redesign shall be subject to staff review and approval.

RESOLVED FURTHER, that the approval of the Planning Commission/City Council and any conditions of that approval shall not extend to any particulars set forth in the documents submitted for the project which are inconsistent with or in violation of any applicable law, including but not limited to Chapters 5 and 17 of the City Code, nor does the approval extend to matters not set forth, or inadequately represented, in submitted documents (whether or not consistent with applicable law). The City reserves the right to require compliance with applicable laws and to attach conditions after initial approval is given, if noncompliance is discovered or additional conditions are considered necessary and appropriate in light of Commission/Council findings.

Moved by Thiel, Seconded by Levine

Ayes: Kellogg, Levine, Robertson, Stehr, Thiel

Noes: None

Absent: None

**Design Review  
1131 Harvard Road**

Mr. JiaLin Pan is requesting design review to seek retroactive approval for the construction of a new stucco an stone veneer entry porch, install a new gas meter, add new iron railing and make other landscape improvements in the front yard. A previous variance and design review application was approved by the Commission on June 12, 2006.

Written notice was provided to neighbors. **Two affirmative response forms** were received. **Correspondence** was provided by: Aaron & Karen Pan, Oct. 6.

**Public testimony** was received from:

Aaron Pan and his daughter Irene summarized their discussions with neighbors regarding the improvements and the actions taken to mitigate neighbor concerns re pond mosquito control and pump/waterfall noise abatement. In addition, at neighbor request, low wattage (under 60 watts) lamps will be added to the pillars and a stone veneer will be added to the low curb wall in the front.

The Commission, with the exception of Commissioners Levine and Thiel, supported application approval, agreeing that neighbor concerns have been addressed and the changes to the entry are attractive. Commissioners Levine and Thiel felt that the iron railing and stone pillars were incompatible with the craftsman-style architecture of the home, preferring instead wood railings and posts.

**Resolution 300-DR-08**

WHEREAS, Mr. JiaLin Pan is requesting retroactive permission for the construction of a new stucco an stone veneer entry porch, install a new gas meter, add new iron railing and make other landscape improvements in the front yard located at 1131 Harvard Road, Piedmont, California, which construction requires design review; and

WHEREAS, after reviewing the application, plans and any and all testimony and documentation submitted in connection with such application, and after having visited subject property, the Piedmont Planning Commission finds that the proposal conforms with the criteria and standards of Section 17.20.9 of the Piedmont City Code:

1. The exterior design elements (including but not limited to height, bulk, area openings, breaks in the façade, line and pitch of the roof, materials, arrangements of structures on the parcel, and concealment of mechanical and electrical equipment) are aesthetically pleasing as a whole and harmonious with existing and proposed neighborhood development in that the improvements comply with Design Review Guidelines II-1, II-3(b), (c) and (d), II-5 and II-5(a).
2. The design is appropriate, considering its effect on neighboring properties' existing views, privacy and access to direct and indirect light because there is no impact.
3. The safety of residents, pedestrians, and vehicle occupants and the free flow of vehicular traffic are not adversely affected, considering the circulation pattern, parking layout and points of ingress and egress because there is no change in existing circulation patterns.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review application of Mr. Pan for construction at 1131 Harvard Road, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

1. The applicant shall submit a landscaping plan for staff approval prior to the issuance of a building permit. After final building permit inspection, the applicant shall be allowed to make modifications to any aspect of the landscape plan that does not require design review under Chapter 17 of the City Code, except that full irrigation must be provided to all landscaped areas;
2. The proposed wood door shall be painted to match the remaining doors throughout the residence;
3. The low curb wall in the front yard shall have either a stucco or stone veneer finish;
4. The proposed lamps atop the stone pillars shall be under 60 watts.

RESOLVED FURTHER, that the approval of the Planning Commission/City Council and any conditions of that approval shall not extend to any particulars set forth in the documents submitted for the project which are inconsistent with or in violation of any applicable law, including but not limited to Chapters 5 and 17 of the City Code, nor does the approval extend to matters not set forth, or inadequately represented, in submitted documents (whether or not consistent with applicable law). The City reserves the right to require compliance with applicable laws and to attach conditions after initial approval is given, if

noncompliance is discovered or additional conditions are considered necessary and appropriate in light of Commission/Council findings.

Moved by Robertson, Seconded by Kellogg

Ayes: Kellogg, Robertson, Stehr

Noes: Levine, Thiel

Absent: None

**Design Review  
140 Ronada Avenue**

Mr. and Mrs. Eric Smit are requesting design review to construct a new 2-story, 679 sq. ft. addition to the rear of the house and a new deck on the main level at the rear. The application also seeks to construct a new built-in barbeque, make window and door modifications, add exterior lighting and construct a new patio at the rear.

Written notice was provided to neighbors. **Three affirmative response forms** were received.

**Public testimony** was received from:

Mark Becker, Project Architect, responded to Commission questions by noting that the garage is currently being used for storage but will be converted back to parking as a Phase II of the project when the owners return from overseas. Phase II improvements to the driveway and garage will be a joint project with the adjacent neighbor. Also, a location for trash/recycling containers will be worked out at staff level.

The Commission agreed that the design of the improvements is attractive and well integrated into the existing house, minimizes structure height and bulk and does not preclude the possibility in the future of providing conforming parking on the property. The Commission acknowledged that the proposal does not increase the existing bedroom count or living density of the existing home.

**Resolution 302-DR-08**

WHEREAS, Mr. and Mrs. Eric Smit are requesting permission to construct a new 2-story, 679 sq. ft. addition to the rear of the house and a new deck on the main level at the rear. The application also seeks to construct a new built-in barbeque, make window and door modifications, add exterior lighting and construct a new patio at the rear located at 140 Ronda Avenue, Piedmont, California, which construction requires design review; and

WHEREAS, after reviewing the application, plans and any and all testimony and documentation submitted in connection with such application, and after having visited subject property, the Piedmont Planning Commission finds that the proposal conforms with the criteria and standards of Section 17.20.9 of the Piedmont City Code:

1. The exterior design elements are aesthetically pleasing as a whole and harmonious with existing and proposed neighborhood development. These elements include but are not limited to: height, bulk, area openings, breaks in the façade, line and pitch of the roof, materials, arrangements of structures on the parcel, and concealment of mechanical and electrical equipment. The distance between the proposed upper level addition/expansion and adjacent residences is reasonable and appropriate due to the existing topography and neighborhood development pattern. Upper level setbacks greater than

the setbacks required for the lower level have been considered and are/are not necessary to reduce losses of ambient and reflected light. The proposal complies with Design Review Guidelines II-1, II-2, II-3, II-5, II-6 and II-7.

2. The proposed upper level addition/expansion has been designed in a way that reasonably minimizes view and light impacts on neighboring properties (as defined in Section 17.2.70), including consideration of the location of the new construction, lowering the height of the addition, expansions within the existing building envelope (with or without excavation), lower level excavation for new multi-level structures, and/or changing the roof slope or ridge direction. The location and height of the addition minimizes impact on neighbors.

3. The size and height of the addition is commensurate with the size of the lot (excluding the portions of the lot that cannot reasonably be built on), and is in keeping with the existing neighborhood development pattern.

4. The safety of residents, pedestrians, and vehicle occupants and the free flow of vehicular traffic are not adversely affected, considering the circulation pattern, parking layout and points of ingress and egress. In accordance with Sections 17.16.1 and 17.22.1, the existing or proposed on-site parking is appropriate to the size of the new upper level addition, and additional parking is not required to prevent unreasonable short and/or long term parking impacts on the neighborhood. Parking issues are not involved in this application because the bedroom count of the structure is either staying the same as existing or more likely being reduced.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review application of Mr. and Mrs. Smit for construction at 140 Ronada Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

1. A comprehensive Construction Management Plan shall be developed by the applicant. The Construction Management Plan shall address noise, vibrations, traffic control, parking, debris removal, dust control, sanitary facilities, and other potential construction impacts, as well as other details involving the means and methods of completing the project including the construction route. The City Building Official shall have the authority to require modifications and amendments to the Construction Management Plan as deemed necessary throughout the course of the project and until the final issuance of a Certificate of Occupancy;
2. Applicant shall implement stormwater treatment Best Management Practices (BMPs) as well as Bay Area Stormwater Management Agencies Association's "Start at the Source" criteria for stormwater quality protection. City staff may impose additional requirements involving the prevention of storm water pollution during construction and permanent drainage, erosion and sediment control. These items will be

reviewed as part of the applicant's Construction Management Plan;

3. Compliance with Chapter 9 Article III of the Municipal Code, which governs the recycling of construction and demolition debris, will be required on all phases of this project. This project is eligible to participate in an incentive program in which the City will provide one-half the cost of debris boxes provided by the City's franchised waste hauler and used exclusively for the purpose of removing recyclable construction and demolition debris, subject to continued availability of funds.

RESOLVED FURTHER, that the approval of the Planning Commission/City Council and any conditions of that approval shall not extend to any particulars set forth in the documents submitted for the project which are inconsistent with or in violation of any applicable law, including but not limited to Chapters 5 and 17 of the City Code, nor does the approval extend to matters not set forth, or inadequately represented, in submitted documents (whether or not consistent with applicable law). The City reserves the right to require compliance with applicable laws and to attach conditions after initial approval is given, if noncompliance is discovered or additional conditions are considered necessary and appropriate in light of Commission/Council findings.

Moved by Levine, Seconded by Thiel

Ayes: Kellogg, Levine, Robertson, Stehr, Thiel

Noes: None

Absent: None

**New House Variance  
And Design Review  
122 Olive Avenue**

Mr. Richard Weinstein, on behalf of MacArthur LLC, is requesting variance and design review to demolish the existing 1,682 sq. ft. two unit, 1-story structure (with a third, unpermitted studio unit) and construct a new 3,026 split-level, 4 bedroom, 3-1/2 bath single family residence. Exterior lighting, outdoor terraces, retaining walls and new landscaping are proposed. A new 2-car garage is proposed at the front of the property. The requested variance is from Section 17.10.6 to allow the new garage to extend to the front property line in lieu of the code required minimum of a 20 ft. front yard setback. A similar application was denied, without prejudice, by the Commission on July 14, 2008.

Written notice was provided to neighbors. **One affirmative response form** was received. **Correspondence** was received from: E. Baldwin, Nov. 10; Velda Egan, Nov. 6

**Public testimony** was received from:

Said-Jon Eghbal, Project Architect, described the extensive design changes made to the proposal in response to the July meeting.

Richard Weinstein responded to Commission questions concerning the garage, stating that the oversized 2-car garage (28 ft. wide) is desired to provide additional street-level storage for bicycles, etc. and is consistent in size with a 3-car garage in the neighborhood. However, he noted his willingness to reduce the size of the garage if necessary.

The Commission congratulated the applicant on the redesign, agreeing that the new proposal is much more compatible with the lot's topography and successfully mitigates neighbor concerns re privacy and view preservation. However, the Commission requested that: (1) if the existing oak tree at the top of the entry steps does not survive the construction, it be replaced with another specimen tree; and (2) the roofing material on the flat roof not be a light color.

As to variance, the Commission agreed that a variance was required and justified for the 2-car garage. However, the Commission engaged in a lengthy discussion as to the extent of an acceptable variance encroachment. Commissioners Levine and Thiel felt that the setback encroachment should be the minimum necessary to meet code dimension requirements for a conforming 2-car garage. They felt that the City Code mandated that variances be limited to the minimum amount necessary to accomplish required construction (in this case a 2-car garage) and that site conditions do not warrant a greater encroachment into the setback. The other Commissioners felt that the setback encroachment should be granted to accommodate the proposed garage, arguing that reducing garage width would compromise the design because two 8 ft. wide garage doors would look better from the street than a single large garage door. In addition, the proposed garage affords convenient street level storage for the applicant, has no negative impact on neighbors and is justified given the steep topography of the lot. Proponents argued that the proposed garage is not strictly for parking given the need for some storage capacity at street level to avoid hauling items up and down the hillside. Proponents also argued that landscaping is provided on both sides of the garage to soften its visual impact. In the end, a Commission majority compromised by agreeing to allow a garage with outside dimension width of no more than 22 ft. to encroach into the setback.

**Resolution 303-V-08**

WHEREAS, Mr. Richard Weinstein, on behalf of MacArthur LLC, requesting permission to demolish the existing 1,682 sq. ft. two unit, 1-story structure (with a third, unpermitted studio unit) and construct a new 3,026 split-level, 4 bedroom, 3-1/2 bath single family residence. Exterior lighting, outdoor terraces, retaining walls and new landscaping are proposed. A new 2-car garage is proposed at the front of the property located at 122 Olive Avenue, Piedmont, California, which construction requires variance; and

WHEREAS, a variance from the requirements of Chapter 17 of the Piedmont City Code is necessary in order to construct within the front setback; and

WHEREAS, after reviewing the application, plans and any and all testimony and documentation submitted in connection with such application, and after having visited subject property, the Piedmont Planning Commission makes the following findings:

1. The underlying lot and existing improvements present unusual physical circumstances, including but not limited to the narrow, steep, upslope nature of the lot. Because of these circumstances, strictly applying the terms of this chapter would keep the property from being



used in the same manner as other properties in the zone which conform to the zoning requirements.

2. The variance is compatible with the immediately surrounding neighborhood and the public welfare because surrounding properties have garages located within the front setback.

3. Accomplishing the improvement without a variance would cause unreasonable hardship in planning, design, or construction because there is no other place on the property to construct a 2-car garage which is required by the City's zoning code for residences with more than two bedrooms. However, there are other locations outside of the setback to construct storage space. There is no requirement that storage space be included in the garage.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the variance application of Mr. Weinstein, on behalf of MacArthur LLC, for the above variance at 122 Olive Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following condition:

- The outside dimension of the proposed 2-car garage shall not exceed 22 ft. in width. Said garage redesign shall be subject to staff review and approval.

RESOLVED FURTHER, that the approval of the Planning Commission/City Council and any conditions of that approval shall not extend to any particulars set forth in the documents submitted for the project which are inconsistent with or in violation of any applicable law, including but not limited to Chapters 5 and 17 of the City Code, nor does the approval extend to matters not set forth, or inadequately represented, in submitted documents (whether or not consistent with applicable law). The City reserves the right to require compliance with applicable laws and to attach conditions after initial approval is given, if noncompliance is discovered or additional conditions are considered necessary and appropriate in light of Commission/Council findings.

Moved by Thiel, Seconded by Levine

Ayes: Kellogg, Levine, Robertson, Thiel

Noes: Stehr

Absent: None

#### **Resolution 303-DR-08**

WHEREAS, Mr. Richard Weinstein, on behalf of MacArthur LLC, requesting permission to demolish the existing 1,682 sq. ft. two unit, 1-story structure (with a third, unpermitted studio unit) and construct a new 3,026 split-level, 4 bedroom, 3-1/2 bath single family residence. Exterior lighting, outdoor terraces, retaining walls and new landscaping are proposed. A new 2-car garage is proposed at the front of the property located at 122 Olive Avenue, Piedmont, California, which construction requires design review; and

WHEREAS, after reviewing the application, plans and any and all testimony and documentation submitted in connection with such application, and after having visited subject property, the Piedmont

Planning Commission finds that the proposal conforms with the criteria and standards of Section 17.20.9 of the Piedmont City Code:

1. The exterior design elements are aesthetically pleasing as a whole and harmonious with existing and proposed neighborhood development. These elements include but are not limited to: height, bulk, area openings, breaks in the façade, line and pitch of the roof, materials, arrangements of structures on the parcel, and concealment of mechanical and electrical equipment. The distance between the proposed multi-level structure and adjacent residences is reasonable and appropriate due to the existing topography and neighborhood development pattern. Upper level setbacks greater than the setbacks required for the lower level have been considered and are/are not necessary to reduce losses of ambient and reflected light. The proposed improvements comply with Design Review Guidelines I-1, I-2, II-2, I-8, I-9, III-1 and IV-1.

2. The proposed new multi-level structure has been designed in a way that reasonably minimizes view and light impacts on neighboring properties (as defined in Section 17.2.70), including consideration of the location of the new construction, lowering the height of the addition, expansions within the existing building envelope (with or without excavation), lower level excavation for new multi-level structures, and/or changing the roof slope or ridge direction. The height of the proposed home has been lowered and its design is consistent with the topography of the site. The roof and massing of the structure has been kept low to minimize impacts on neighbor view and light. The project complies with Design Review Guidelines I-1, I-2, I-4, I-5, I-7, III-1, III-7, IV-1 through IV-6.

3. The size and height of the addition is commensurate with the size of the lot (excluding the portions of the lot that cannot reasonably be built on), and is in keeping with the existing neighborhood development pattern.

4. The safety of residents, pedestrians, and vehicle occupants and the free flow of vehicular traffic are not adversely affected, considering the circulation pattern, parking layout and points of ingress and egress. In accordance with Sections 17.16.1 and 17.22.1, the existing or proposed on-site parking is appropriate to the size of the new multi-level structure and additional parking is not required to prevent unreasonable short and/or long term parking impacts on the neighborhood.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review application of Mr. Weinstein, on behalf of MacArthur LLC, for construction at 122 Olive Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

1. **Construction Management Plan.** A comprehensive Construction Management Plan shall be developed by the applicant. The Construction Management Plan shall address noise, vibrations, traffic control, parking, debris removal, dust control, sanitary facilities, and other potential construction impacts, as well as other details involving the means and methods of completing the Project including

the construction route. The City Building Official shall have the authority to require modifications and amendments to the Construction Management Plan as deemed necessary throughout the course of the Project and until the final issuance of a Certificate of Occupancy.

2. **Construction Completion Schedule.** Work on the Project, once commenced, shall be promptly executed with continuous good faith and reasonable progress. Since timely completion of this Project is of the essence, the Applicant shall submit for approval a Construction Completion Schedule, which will specify, in detail, the duration and percentage complete of each phase.

a. The Construction Completion Schedule with associated construction values for each benchmark shall set forth completion dates for the following benchmarks:

- i. Completion of Excavation;
- ii. Completion of Retaining Walls;
- iii. Completion of Foundation;
- iv. Completion of Rough Framing;
- v. Completion of Electrical;
- vi. Completion of Plumbing;
- vii. Completion of Mechanical;
- viii. Completion of Fire Sprinklers;
- ix. Completion of Home;
- x. Completion of Hardscaping and Landscaping;

and of any further construction benchmarks and conditions of occupancy as may be determined by the Director of Public Works.

b. The Director of Public Works shall, before the Project commences, make a determination as to the completion dates applicable to the Project and such determination shall constitute the "Approved Schedule" and be binding on the Applicant. The City may, at the Applicant's sole cost, engage the services of a consultant to review the Applicant's proposed Construction Completion Schedule and, to the extent the period allocated for any work appears unjustifiable, recommend to the Director of Public Works a reasonable completion date for any benchmark.

c. If the work for any specific benchmark has not been completed within 90 days after the completion date set forth in the Approved Schedule, and the delay in completion has not been caused by force majeure, the Director of Public Works shall have the option at any time thereafter to make claim against the Applicant's Performance Security in order to complete such benchmark.

3. **Geotechnical Report and Review.** The Applicant shall submit a report prepared by a geotechnical engineer of the Applicant's choice that fully assesses the existing site conditions, and addresses all issues regarding excavation and grading, foundations and their construction, drainage, retaining wall systems, periodic on-site observations, and other related items involving the Project.

a. **Peer Review.** The City, at the Applicant's sole expense, shall retain an independent geotechnical consultant to perform a peer-review

of the Applicant's geotechnical report and advise the City in connection with the Applicant's proposals. The City Engineer shall select this independent geotechnical consultant, whose services shall be provided for the sole benefit of the City and whose reports and recommendations can be relied upon only by the City. Said independent geotechnical consultant shall also review the building plans during the permit approval process, and may provide periodic on-site observations during excavation and construction of the foundations as deemed necessary by the City Engineer.

4. **Foundation/Shoring/Excavation Plan.** The Applicant shall submit foundation, excavation, and shoring plans prepared by a structural engineer that fully address issues of site shoring, fencing and hillside security issues. Said plans shall not require any trespassing or intruding into neighboring properties, and shall militate against any subsidence or other damage to neighboring properties. Such plans shall incorporate as appropriate the recommendations of the Applicant's geotechnical engineer and the City's geotechnical consultant, and shall be subject to approval by the City Engineer and the Chief Building Official.

5. **Stormwater BMPs for Construction.** Applicant shall implement stormwater treatment Best Management Practices (BMPs) as well as Bay Area Stormwater Management Agencies Association's "Start at the Source" criteria for stormwater quality protection. City Staff may impose additional requirements involving the prevention of storm water pollution during construction and permanent drainage, erosion and sediment control. These items will be reviewed as part of the Applicant's Construction Management Plan.

6. **City Facilities Security.** The Applicant shall provide a specific cash deposit, letter of credit, bank guarantee, bond, or other similar financial vehicle ("City Facilities Security") in the amount of \$100,000.00, as established by the Director of Public Works, to cover the cost of any damage to City property or facilities in any way caused by Applicant, Applicant's contractors or subcontractors, or any of their agents, employees or assigns, or others working for or on behalf of Applicant on this Project, and related in any way to the Project. The form and terms of such City Facilities Security shall be determined by the Director of Public Works after consultation with the Applicant.

a. To provide clear baseline information to assist in determining whether damage to the City's facilities has been caused by the Applicant or others working for or on behalf of Applicant on this Project, the City will document such facilities (including, without limitation, the streets and facilities along the approved construction route as specified in the Construction Management Plan to establish the baseline condition of such streets and facilities, and shall further re-document the streets as deemed appropriate after the Project commences until the Director of Public Works determines that further documentation is no longer warranted. As part of such documentation, the City may possibly hose or water down the streets to better emphasize any cracks or damage in the surface thereof. The Applicant shall be responsible for the full cost of all such documentation and related work, and shall reimburse the City therefore within 21 days

after receiving written notification of the work performed and the amount to be reimbursed.

b. Proceeds from the City Facilities Security shall be payable to the City upon demand, conditioned solely on the Director of Public Works' certification on information and belief that all or any specified part of such proceeds are due and owing to the City. The City shall not be required to prove or otherwise establish in any way that such proceeds are required to compensate it for damages to City property or facilities, that Applicant is directly or indirectly responsible therefor, or any other prerequisites to the City's entitlement to collect such proceeds from the provided security.

7. **Performance Security.** The Applicant shall provide a specific cash deposit, letter of credit, bank guarantee, performance bond, or other similar financial vehicle ("Performance Security") to ensure full compliance with these Conditions of Approval and the completion of the full construction of the Project, including all site improvements and landscaping, in accordance with the plans approved by the City.

a. The Performance Security shall be in an amount to include all expected costs to complete the Project, plus 25% to cover cost escalation, unexpected expenditures and other contingencies. If, as the Project proceeds, the expected cost to complete the Project increases beyond the original estimate in the opinion of the Director of Public Works, the City may require the Applicant to increase the amount of the Performance Security by such additional amount plus 25%, and Applicant shall provide City with written evidence of compliance within 15 working days after receiving written notice of the additional required amount. The City shall retain, at the Applicant's sole expense, an independent estimator to determine the total expected costs to complete the Project and any subsequent revisions thereto.

b. The Director of Public Works shall approve the form and amount of the Performance Security, which shall absolutely ensure completion of the entire Project. Performance under the Performance Security shall commence upon demand by the City, conditioned solely on the Director of Public Works' certification on information and belief that all or any specified part of such Performance Security is due and owing to the City. The City shall not be required to prove or otherwise establish in any way that Applicant is in default of any condition, covenant or restriction, or any other prerequisite to the City's entitlement to performance by the provided security.

c. The Performance Security shall not be released until the entire Project has an approved Final Inspection by the Chief Building Official, provided that if, in the judgment of the Director of Public Works, sufficient work has been completed according to the benchmarks and construction values as established under the Construction Completion Schedule, such Performance Security may be reduced to the extent the Director of Public Works in his sole discretion shall determine is appropriate.

8. **Consultant Cost Recovery.** As the City must, in order to accommodate the scope and nature of the Project proposed by the Applicant, retain independent consultants with specialized expertise,

the Applicant shall, prior to issuance of the building permit, make a cash deposit with the City in the amount of \$5,000.00 to be used to pay for the fees and expenses of such City consultants, or in any way otherwise required to be expended by the City for professional assistance (other than City Staff), in conjunction with the Project, at the discretion of the Director of Public Works. If such cash deposit has been reduced to \$2,500.00 or less at any time, the Director of Public Works may require the Applicant to deposit additional funds to cover any further estimated fees and expenses associated with consultants retained by the City for the Applicant's Project. Any unexpended amounts shall be refunded to the Applicant within 90 days after the Project has an approved Final Inspection by the Chief Building Official.

9. **City Attorney Cost Recovery.** Due to the substantial additional commitment of City Attorney's time required to accommodate the scope and nature of the Project proposed by the Applicant, the Applicant shall, prior to commencement of construction, make a cash deposit with the City in the amount of \$5,000.00 to be used to offset time and expenses of the City Attorney relating to the Project. If such cash deposit has been reduced to \$2,500.00 or less at any time, the Director of Public Works may require the Applicant to deposit additional funds to cover any further estimated additional City Attorney time and expenses. Any unused amounts shall be refunded to the Applicant within 90 days after the Project has an approved Final Inspection by the Chief Building Official.

10. **Property Insurance.** The Applicant shall purchase and maintain property insurance on an "all-risk" policy form, including builder's risk, in the amount of the initial total expected costs to complete the Project, plus the value of subsequent modifications and revisions, comprising total value for the entire Project on a replacement cost basis without optional deductibles. Such property insurance shall include interests of the Applicant, its contractor, subcontractors and sub-subcontractors in the Project, and shall be maintained until the entire Project has been completed and has an approved Final Inspection by the Chief Building Official.

11. **Contractor's General Liability Insurance.** The Applicant shall require all contractors and subcontractors performing work on the Project to maintain General Liability Insurance for protection from claims for damages because of bodily injury, including death, and claims for damages, other than to the contractor's work itself, to property which may arise out of or result from the contractor's operations. Such insurance shall be written for not less than \$1,000,000.00 per occurrence.

12. **Professional Liability Insurance.** The Applicant shall require its architect, any structural engineer, soils engineer, geotechnical engineer and other engineers and professional consultants retained to perform work relating to the Project to procure and maintain for a period of no fewer than 5 years after completion of the Project, professional liability insurance with coverage limits of no less than \$1,000,000.00 per claim.

13. **Insurance Cancellation Notice.** The Applicant shall require that all insurance policies obtained to satisfy any specific Condition of Approval provide the City with at least 10 days prior written notice from the insurance company of the cancellation of or change to any insurance coverage provided therein. Applicant shall immediately arrange for substitute insurance coverage to replace any such cancellation or change, subject to the approval of the City Attorney.
14. **Creditors' Claims.** All security, funds or financial vehicles set forth in any of these Conditions of Approval shall be earmarked or dedicated so that they are not subject to creditors' claims.
15. **CEQA Agreement.** The Applicant shall, pursuant to a form of agreement prepared by the City Attorney and executed by the Applicant, defend, at Applicant's sole expense, indemnify and hold harmless the City of Piedmont, its elected and appointed officials, agents, officers and employees from and against any claim, demand, loss, liability, action or proceeding relating to, resulting from, or in connection with any determination, whether through its Planning Commission, City Council, City Staff, or otherwise, regarding applicability of the California Environmental Quality Act to the Applicant's Project, including but not limited to any determination that a Categorical Exemption applies or that an Initial Study, a Negative Declaration or an Environmental Impact Report is or is not required for the Project.
16. **C&D Compliance.** Compliance with Chapter 9 Article III of the Municipal Code, which governs the recycling of construction and demolition debris, is required for all phases of this project. This Project is eligible to participate in an incentive program in which the City will provide one-half the cost of debris boxes provided by the City's franchised waste hauler and used exclusively for the purpose of removing recyclable construction and demolition debris, subject to continued availability of funds.
17. **Modifications to Conditions.** Any bonds, financial vehicles, insurance requirements or related Conditions of Approval may be modified in a reasonable manner with the joint agreement of the Director of Public Works and the City Attorney, provided that such modified Conditions of Approval continue to satisfy the general intent of the Condition as originally set forth herein.
18. **Final Landscape Plan.** The Applicant shall provide a Final Landscape Plan that shows more specificity in terms of the proposed species, number and size of plants, and irrigation system. Said plan shall include a specimen tree, either existing or replaced. The Final Landscape Plan shall be subject to staff review and approval prior to the issuance of a building permit.
19. **Garage Door.** The garage door shall be mechanically operated, roll-up doors. The final design shall be subject to staff review prior to the issuance of a building permit.
20. **Subsidence Security.** The Applicant acknowledges and agrees that all work on the Project may be immediately stopped by the City in the event of any unanticipated landslides, subsidence, creep,

erosion or other geologic instability, and may not resume until the City Engineer is fully assured that no further subsidence or erosion will occur.

a. The Applicant shall provide a specific cash deposit, bond, letter of credit, bank guarantee or other similar financial vehicle ("Subsidence Security") in the amount of \$200,000.00 as determined by the Director of Public Works, to provide immediately available funds for responding to, stemming and/or remediating any landslides, subsidence, creep, erosion or other geologic instability that may occur on any neighboring properties and which is triggered or caused in any way by Applicant's excavation, construction or any other activity relating to the Project and not immediately and fully rectified by Applicant to the satisfaction of the Director of Public Works.

b. Proceeds from the Subsidence Security shall be payable to the City upon demand, conditioned solely on the Director of Public Works' certification on information and belief that all or any specified part of such proceeds are due and owing to the City. The City shall not be required to prove or otherwise establish in any way that such proceeds are required to respond to an incident of geologic instability, that Applicant is directly or indirectly responsible therefore, or any other prerequisites to the City's entitlement to collect such proceeds from the provided security.

c. The form and terms of the Subsidence Security shall be determined by the Director of Public Works after consultation with the Applicant, and shall not be released until the entire Project has been completed and has an approved Final Inspection by the Chief Building Official.

21. **Approved Plans.** The approved plans are those submitted on October 30, 2008 after notices were mailed and the plans were available for public review.

22. **Garage Width.** The garage shall be redesigned to have an outside dimension of no greater than 22 ft. in width. Said redesign shall be subject to staff review and approval.

23. **Roof Material.** The roof material shall have a neutral color, subject to staff review and approval.

24. **Finish Materials.** All final finish materials shall be subject to staff review and approval.

RESOLVED FURTHER, that the approval of the Planning Commission/City Council and any conditions of that approval shall not extend to any particulars set forth in the documents submitted for the project which are inconsistent with or in violation of any applicable law, including but not limited to Chapters 5 and 17 of the City Code, nor does the approval extend to matters not set forth, or inadequately represented, in submitted documents (whether or not consistent with applicable law). The City reserves the right to require compliance with applicable laws and to attach conditions after initial approval is given, if noncompliance is discovered or additional conditions are considered necessary and appropriate in light of Commission/Council findings.



Moved by Thiel, Seconded by Levine

Ayes: Kellogg, Levine, Robertson, Stehr, Thiel

Noes: None

Absent: None

**ADJOURNMENT**

There being no further business, Chairman Stehr adjourned the meeting at 9:55 p.m.