

PIEDMONT PLANNING COMMISSION

Regular Meeting Minutes for Monday October 13, 2008

A Regular Session of the Piedmont Planning Commission was held October 13, 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 September 29, 2008.

CALL TO ORDER

Chairman Stehr called the meeting to order at 5:00 p.m. She announced that Agenda Item #7 (Variance/Design Review, 235 Palm Drive) has been withdrawn from tonight's consideration.

ROLL CALL

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

Absent: Commissioner Clark Thiel

Staff: City Planner Kate Black, Assistant Planner Kevin Jackson, Planning Technicians Sylvia Toruno and Gabe Baracker and Recording Secretary Chris Harbert

City Council Liaison: Councilmember John Chiang

ANNOUNCEMENT

General Plan Update—Chairman Stehr announced that the Commission will hold a public hearing on November 13 to review and discuss the General Plan Update. The public is invited to attend.

CONSENT CALENDAR

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

Design Review 550 Mountain Avenue

Resolution 263-DR-08

WHEREAS, Ms. Merrily Lee is requesting permission to make modifications to the residence, including: construction of a 210 sq. ft. single story master suite addition at the north (left) rear of the house; construction of a 761 sq. ft. single story 2-bedroom, 1 bath addition at the south (right) rear of the house; demolition of an existing trellis; modifications to windows and doors and the addition of exterior lighting located at 550 Mountain 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 (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 project complies with Design Review Guidelines II-3(a) and (b) in terms of its scale, mass and architectural style compatibility with the existing residence.

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 material impact. The proposal complies with Design Review Guidelines II-1, II-2 and II-3. The exterior design and window and door treatments are in keeping with the existing residence.

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 impact on existing patterns of circulation. The proposed improvements are located at the rear of the property.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review application of Ms. Lee for construction at 550 Mountain Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

1. Based on the scope and nature of the proposed landscape and development plans, a best management practice plan for construction which complies with the Alameda Countywide Clean Water Program General and Residential Conditions of Approval will need to be developed by the applicant prior to obtaining a building permit;
2. Due to the scope and nature of the application, a construction management plan shall be developed and approved by staff prior to obtaining a building permit. Said plan shall be comprehensive while specifically addressing the duration of the project, construction hours, the staging of materials, and parking of worker vehicles to ensure the free flow of traffic along Mountain Avenue;
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. As a Covered project, this project is eligible to participate in the 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;
4. The proposed windows and door shall be painted to match the remaining windows and doors throughout the residence.

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.

Variance
1139 Winsor Avenue

Resolution 273-V-08

WHEREAS, Mr. John Perkins is requesting permission to make various front yard improvements, including: to construct a new stucco fence and wood gate, add a wood roof trim, install three new skylights, add new garage doors, construct a new wood trellis, add new stucco siding and French doors at the rear, and make other decorative modifications located at 1139 Winsor 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 20 ft. 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 existing garage is 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 variance is compatible with the immediately surrounding neighborhood and the public welfare because there are similarly configured houses in the neighborhood.
3. Accomplishing the improvement without a variance would cause unreasonable hardship in planning, design, or construction because the existing garage is located within the setback and cannot be improved without variance.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the variance application of Mr. Perkins for the above variance at 1139 Winsor Avenue, 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
1139 Winsor Avenue**

Resolution 273-DR-08

WHEREAS, Mr. John Perkins is requesting permission to make various front yard improvements, including: to construct a new stucco fence and wood gate, add a wood roof trim, install three new skylights, add new garage doors, construct a new wood trellis, add new stucco siding and French doors at the rear, and make other decorative modifications located at 1139 Winsor 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 (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 proposal complies with Design Review Guidelines II-1, II-2, II-3(a) and (b), II-6, II-6(b), II-6(c), III-2 and III-3.
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 change in existing conditions related to neighbor light, view or privacy. The proposal complies with Design Review Guidelines V-1, V-2, V-4, V-5(a) and II-7.
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 Guidelines III-7 and V-5.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review application of Mr. Perkins for construction at 1139 Winsor Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

1. Due to the scope and nature of the application, a construction management plan shall be developed and approved by staff prior to obtaining a building permit. Said plan shall be comprehensive while specifically addressing the duration of the project, construction hours, the staging of materials, and parking of worker vehicles to ensure the free flow of traffic along Winsor Avenue;
2. 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. As a Covered project, this project is eligible to participate in the 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;

3. The proposed wood windows and French doors shall be painted to match the existing wood windows and doors throughout the residence;
4. The proposed skylight flashings shall be painted to match the color of the adjacent roof; and
5. The proposed garage door shall be electronically operated.

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
170 Nova Drive**

Resolution 276-DR-08

WHEREAS, Mr. Johnathan Becker and Ms. Virginia Watkins are requesting permission to make modifications in the east side yard, including: remove the brick fireplace and barbecue; construct a fence along Nova Drive and Hill Lane; construct new built-in planters, retaining wall and built-in benches; and make various landscape and hardscape changes located at 170 Nova 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 proposal complies with Design Review Guidelines II-1, II-2, II-3(a) through (d) in terms of its compatibility in scale, mass and architectural style and its consistency in use of materials and detailing to create a well integrated improvement.
2. The design is appropriate, considering its effect on neighboring properties' existing views, privacy and access to direct and indirect light because the retaining walls and fences comply with Design Review Guidelines IV-2, V-1, V-2 and V-6 in terms of height, style, proportion and materials.

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 material change in existing conditions. The project complies with Design Review Guidelines V-8, V-9 and V-10.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review application of Mr. Becker and Ms. Watkins for construction at 170 Nova Drive, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

1. Due to the scope and nature of the application, a construction management plan shall be developed and approved by staff prior to obtaining a building permit. Said plan shall be comprehensive while specifically addressing the duration of the project, construction hours, the staging of materials, and parking of worker vehicles to ensure the free flow of traffic along Nova Drive;
2. The new fencing and gate along Nova Drive shall not exceed 4 ft. in height.

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 Kellogg

Ayes: Levine, Kellogg, Robertson, Stehr, Henn

Noes: None

Absent: Thiel

(Note: Chairman Stehr abstained from the vote approving Resolution 270-DR-08 and Alternate Commissioner Henn abstained from the vote approving Resolutions 273-V-08 and 273-DR-08).

PUBLIC FORUM

There were no speakers for the public forum.

APPROVAL OF MINUTES

Resolution 23-PL-08

RESOLVED, that the Planning Commission approves as submitted its meeting minutes of September 8, 2008.

Moved by Levine, Seconded by Kellogg

Ayes: Levine, Kellogg, Robertson, Stehr

Noes: None

Abstain: Henn

Absent: Thiel

REGULAR CALENDAR

The Commission considered the following items of regular business:

**Variance and
Design Review
104 Dracena Avenue**

Mr. John Lambert and Ms. Helen Potter are requesting variance and design review to replace the existing sloped garage roof with a flat roof terrace and trellis that connects to the existing deck along the right (south) side of the residence. The requested variance is from Section 17.10.6 to allow the new garage overhang to extend to within 8'3" 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. **Three affirmative response forms** were received.

Public testimony was received from:

Peter Gilbert, Project Architect, stated that the proposed improvements will not change the existing footprint of the house and are intended to rebuild the existing 1950's era garage so that it is more appropriate in scale and architectural style with the existing residence. The proposed garage will connect with the house and provide additional outdoor living space for the property. The proposed garage roof terrace will connect with an existing deck.

The Commission, with the exception of Commissioner Henn, noted its inability to justify the granting of a variance to increase structure height and massing within the front setback. While the Commission acknowledged that the existing garage is not architecturally compatible with the house, it is a functioning garage and the proposed plan to add a new deck and terrace above a rebuilt garage would significantly increase the amount of existing setback massing for the sole purpose of providing additional outdoor living space. The Commission majority objected to changing the existing setback condition in order to add outdoor living space when the property has usable outdoor space elsewhere. The Commission majority noted its support of granting a variance to make the existing garage more architecturally compatible with the house, provided the extent of existing setback encroachment/massing is limited to only that necessary for a parking structure. Alternate Commissioner Henn supported project approval, believing that the variance request is essentially technical in nature, the variance situation is pre-existing, the design of the proposed improvements is attractive and there is no neighborhood opposition to the project.

Mr. Gilbert stated that some of the extra garage height being requested is necessary in order to increase the plate height of the garage to 8 ft. so as to make the space more functional and allow for a workable garage door (existing plate height is 4-1/2 to 5 ft. at the rear). However, he agreed with the Commission that the arbor structure could be eliminated and the configuration of the roof terrace redesigned to minimize the amount of garage height and bulk located within the setback. A suggestion was made that an open railing design around the terrace rather than a solid parapet wall would also reduce mass. The Commission did not object to the terrace element of the plan in concept.

Resolution 226-V-08

WHEREAS, Mr. John Lambert and Ms. Helen Potter are requesting permission to replace the existing sloped garage roof with a flat

roof terrace and trellis that connects to the existing deck along the right (south) side of the residence located at 104 Dracena 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 20 ft. 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 do not present unusual physical circumstances because of which 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. A new garage can be constructed with less intrusion into the setback
2. The variance is not compatible with the immediately surrounding neighborhood and the public welfare because outdoor living space on the property is available outside of the front setback. The proposed design creates too much bulk within the front setback.
3. Accomplishing the improvement without a variance would not cause unreasonable hardship in planning, design, or construction because a functioning, new garage can be constructed with less impact on the front setback.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission denies, without prejudice, the variance application of Mr. Lambert and Ms. Potter for the above variance at 104 Dracena Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City.

Moved by Levine, Seconded by Kellogg

Ayes: Levine, Kellogg, Robertson, Stehr

Noes: Henn

Absent: Thiel

Resolution 226-DR-08

WHEREAS, Mr. John Lambert and Ms. Helen Potter are requesting permission to replace the existing sloped garage roof with a flat roof terrace and trellis that connects to the existing deck along the right (south) side of the residence located at 104 Dracena 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:

- Construction of the proposed design is contingent upon approval of a front setback variance that has not been granted.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission denies, without prejudice, the design review application of Mr. Lambert and Ms. Potter for construction at 104 Dracena Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City.

Moved by Levine, Seconded by Kellogg

Ayes: Levine, Kellogg, Robertson, Stehr

Noes: Henn

Absent: Thiel

**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 4,482 sq. ft. 4-bedroom house with living room, dining room, kitchen, pantry, laundry room, mud room, storage rooms, media room, two offices and a 2-car garage. Several balconies and skylights are proposed. Site improvements include walls and retaining walls, walkways, a rear deck and patio, 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.

The City Planner announced that because of a public notice error, the Commission cannot take action tonight on this application. However, she recommended that the Commission receive public testimony and comment on the proposal but then take action to continue to the application to a future meeting.

Written notice was provided to neighbors. **One affirmative and seven negative response forms** were received. **Correspondence** was received from: St. James Homes Association, Oct. 7, 8; Kathy & David Welch, Oct. 2; Jerome & Susan Herrick, Sept. 2, 26; Caryl & Byron James, Oct. 7; Velda Egan, Oct. 9; Paul Faberman, Oct. 9; Ben & Susan O'Neil, Sept. 30, Oct. 12; Jan & Randy Kessler, Oct. 1; Janice & Allen Pastron, Oct. 2;

Public testimony was received from:

Susan and Ben O'Neil summarized their efforts to work with neighbors in preparing the design, explained the reasons for the central siting of the new home on the lot and described the LEED construction elements of the proposal intended to maximize energy and water conservation. They noted that the lot has been vacant for years.

Robert Pennell, Project Architect, explained how the contemporary style of the home is nestled into the heavily forested lot and how the use of exterior materials, articulation details and landscaping are employed to minimize the height of the structure.

Josephine Meikle opposed the project, citing the loss of large, beautiful oak trees, the tall height and large size of the proposed house, concern that two "home offices" may create parking congestion associated with this business and fear that construction activity may impede the use of her driveway.

Bryon and Caryl James opposed the project, citing a loss of privacy, the removal of beautiful trees, the “commercial” architectural appearance of the home, its large height and bulk in comparison with other homes in the neighborhood, the potential of ground slippage due to excavation and tree removal and the potential of light glare from the home’s large expanse of glass at the rear elevation.

Susan and Jerry Herrick opposed the project for the large mass, size and height of the proposed home, the loss of their rear yard privacy, the home’s incompatibility with the unique architectural style of the Croydon Circle residences, the project’s failure to take advantage of the topography of the lot and the unattractive, tall, box-like profile of the proposed home.

Alexis Hacker, St. James Homes Association Board Member, referenced the Association’s letter in summarizing the Association’s review of the proposed design and its request for the construction management plan to address issues related to construction crew parking, storm water flow and neighbor driveway access.

Doug Brian voiced support for project approval, stating that he sold the lot to the O’Neils and was confident in their intention to build a beautiful, energy efficient home that will be an asset to Piedmont.

The Commission requested that the proposed design be revised to: (1) lower the height and mass of the proposed structure, especially with regard to reducing the visual massing/impact on the streetscape; (2) improve the proposed landscaping plan to include replacement trees of a sufficient size to restore neighbor view and privacy lost as a result of the removal of existing oak trees; (3) take better advantage of the lot’s topography to lessen visual bulk and massing; (4) reconsider the amount of glass on the rear façade to minimize potential glare and privacy impacts on neighbors; (5) revise the floorplan to lessen the home’s potential as a 7-bedroom residence; and (6) consider the possibility of providing a third covered off-street parking space. In particular, design suggestions included:

- Reducing structure height by 6 ft. by reducing the ceiling heights in the garage, second and third levels; lowering the height of the parapet wall screening the solar panels; lowering/leveling out the rear yard or adding steps from the patio to the rear yard;
- Step the design into the hillside rather than constructing the home on the proposed “stone pillar base” to lessen front massing or if the proposed “cube-like” architectural style is preferred, significantly reduce the square footage of the home;
- Reconsider the layout of “Susan’s Room” to lessen its potential as a possible bedroom;
- Consider adding a carport to provide a third parking space

The Commission added that it was not opposed in concept to a contemporary architectural design, acknowledging that the neighborhood reflects a mix of architectural styles.

Resolution 24-PL-08

RESOLVED, that because of an error in public notification, the Planning Commission continues until November 10, 2008, further consideration of Mr. and Mrs. Ben O'Neil's design review application for new home construction at 53 Cambrian Avenue, with the understanding that if a complete and full set of plans cannot be submitted in a timely manner, the application will be heard at the December meeting.

Moved by Levine, Seconded by Robertson

Ayes: Levine, Kellogg, Robertson, Stehr, Henn

Noes: None

Absent: Thiel

The Commission recessed for dinner at 7:10 p.m. and reconvened at 7:45 p.m.

**Variance and
Design Review
328 Pacific Avenue**

Mr. and Mrs. Scott Lawson are requesting variance and design review to enclose a porch facing the east side yard, make window and door modifications, add exterior lighting, make hardscape changes in the right side yard and make various changes to the interior. The requested variance is from Section 17.22.2 to allow a proposed floor area ratio of 56.6% in lieu of the code permitted maximum of 50%.

Written notice was provided to neighbors. **Four affirmative and one negative response forms** were received. **Correspondence** was received from: August Moretti & Audrey Kavka, Oct. 9.

Public testimony was received from:

Lisa Lawson stated that the existing porch/alcove had been used for garbage can storage; however, it is no longer large enough to accommodate the new wheeled trash/recycling carts. Its enclosure will incorporate the space into the home's interior and eliminate its potential as a dark, useless, hiding place for potential intruders. The new location for the wheeled trash carts is on a new concrete pad adjacent to the garage. A new side door on the garage is requested to conveniently access the new garbage cart storage area. She stressed that the trash carts cannot be conveniently stored in the garage because of their large size and existing storage units/shelves lining the interior side walls of the garage. The garage is currently used for the tandem parking of two vehicles and there is not sufficient width to allow for both ingress/egress out of the vehicles and garbage carts storage.

Glen Jarvis and Arleta Chang, Project Architects, described the proposed improvements to the 1926 vintage home and the fact that the porch enclosure will be incorporated into the renovation of the guest bedroom/bath rooms. Mr. Jarvis added his belief that a FAR exemption rather than variance is appropriate, given that there will be no change in the existing footprint/building envelope of the home. Ms. Chang noted that the vast majority of Piedmont residents store their garbage containers in side yards and the applicant's proposed location is screened from street view by a 6 ft. side yard fence and gate as required by code. She felt it unreasonable to require that these cans also be screened from the windows of an adjacent 3-story house.

August Moretti objected to the placement of the trash containers in the side yard, preferring that the unsightly containers be stored inside the garage. He stated that the proposed location of the carts would be visible from his kitchen and bedroom windows. He also felt that creating a side door in the garage would lessen the fire safety rating of the garage. He did not object to the proposed enclosure of the porch/alcove.

The Commission acknowledged that only the porch/alcove enclosure and garage side door are within the purview of Commission consideration. Side and rear yard locations of trash carts are permitted without City approval. It was also noted that fire safety rating issues were not involved with the applicant's garage since the side of the garage is not located within the 4 ft. side yard setback. The Commission agreed that variance approval is justified in light of the fact that the porch space is already partially enclosed, is useless as is and its enclosure will not expand the existing building envelope of the residence. As to the garage side door, the Commission agreed that its design and placement is appropriate.

Resolution 270-V-08

WHEREAS, Mr. and Mrs. Scott Lawson are requesting permission to enclose a porch facing the east side yard, make window and door modifications, add exterior lighting, make hardscape changes in the right side yard and make various changes to the interior located at 328 Pacific 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 exceed the City's floor area ratio 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 alcove already exists and the proposal does not add to the volume of the home's existing building envelope. 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 there is no impact associated with the enclosure of an existing space and in fact will increase public safety by eliminating a dark, useless space.
3. Accomplishing the improvement without a variance would cause unreasonable hardship in planning, design, or construction because the variance situation is pre-existing.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the variance application

of Mr. and Mrs. Lawson for the above variance at 328 Pacific Avenue, 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 Robertson, Seconded by Kellogg

Ayes: Levine, Kellogg, Robertson, Stehr, Henn

Noes: None

Absent: Thiel

Resolution 270-DR-08

WHEREAS, Mr. and Mrs. Scott Lawson are requesting permission to enclose a porch facing the east side yard, make window and door modifications, add exterior lighting, make hardscape changes in the right side yard and make various changes to the interior located at 328 Pacific 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 (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 proposal complies with Design Review Guidelines II-2 and II-3. The improvements reflect a consistency in use of materials and are well integrated into the existing residence.
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 proposed garage door is screened by an existing fence and public safety is enhanced by the enclosure of the alcove. The proposal complies with Design Review Guidelines II-6, II-6(a) and (b), II-7 and II-7(a).
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 impact.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review application of Mr. and Mrs. Lawson for construction at 328 Pacific Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following condition:

- Due to the scope and nature of the application, a construction management plan shall be developed and approved by staff prior to obtaining a building permit. Said plan shall be comprehensive while specifically addressing the duration of the project, construction hours, the staging of materials, and parking of worker vehicles to ensure the free flow of traffic along Pacific Avenue;

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 Levine

Ayes: Levine, Kellogg, Robertson, Stehr, Henn

Noes: None

Absent: Thiel

**Second Unit Permit
With Parking Exception
And Design Review
128 Moraga Avenue**

Mr. Suk Won Chung is requesting a Second Unit Permit with Parking Exception and design review to: (1) convert part of the basement level into an approximately 696 sq. ft. 2-bedroom rent-restricted second unit; and (2) to add and replace doors and windows, add exterior lighting, replace a stair and landing in the right side yard, and make various changes to the interior including the reduction in the number of rooms eligible for use as a bedroom from 4 to 3. A parking exception is requested in order to develop a second unit without providing the required on-site parking.

Written notice was provided to neighbors. **Two negative response forms** were received.

Public testimony was received from:

Jason Kim, Project Contractor, described the minor exterior changes to the residence in connection with the proposed property upgrade as well as the creation of the second unit.

Suk Chung responded to Commission questions by stating that the home's existing 1-car garage is currently used to store his son's art work and is not used for parking because the garage door is inoperable.

The Commission supported application approval, provided the existing 1-car garage is cleaned out and a new garage door installed so that this

structure can be used for parking. In addition, the Commission requested that existing mess and debris on the property be cleaned up in conjunction with project construction and a landscape plan be submitted for staff approval. The Commission supported the creation of a second unit, noting that such housing options are a benefit to the community at large. The Commission noted that although Moraga Avenue is a busy street, there is ample on-street parking available to accommodate the parking needs of second unit occupancy. In addition, there is no place on the property where an off-street parking space can be added; hence approval of the parking exception is justified. As to design review issues, the Commission agreed that the proposed changes to the existing residence reduce the number of existing bedrooms from four to three, provide better and more consistent window treatment and are minor in nature.

Resolution 274-DR-08

WHEREAS, Mr. Suk Won Chung is requesting permission to add and replace doors and windows, add exterior lighting, replace a stair and landing in the right side yard, and make various changes to the interior including the reduction in the number of rooms eligible for use as a bedroom from 4 to 3 located at 128 Moraga 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 (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 proposal complies with Design Review Guidelines II-1, II-2, II-3(b). There are no changes to the existing mass and architectural style of the residence and proposed changes in the home's windows and doors are appropriate and reflect an upgrade from existing conditions.
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 material impact. The project complies with Design Review Guidelines II-3(b) and II-6(a).
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 traffic flow. The proposed 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. Chung for construction at 128 Moraga Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

1. The new exterior light fixtures shall be downward-directed with an opaque shade that completely covers the light bulb;
2. Compliance with Chapter 9 Article III of the Municipal Code, which governs the recycling of construction and demolition debris, is required. In addition, all loose debris on the property shall be removed during the course of construction; and
3. Due to the scope and nature of the application, a construction management plan shall be developed and approved by staff prior to obtaining a building permit. Said plan shall be comprehensive while specifically addressing the duration of the project, construction hours, the staging of materials, and parking of worker vehicles to ensure the free flow of traffic along Moraga Avenue;
4. A landscape plan, including reasonable automatic irrigation, shall be submitted for staff review and approval in conjunction with the Construction Management Plan.

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 Kellogg, Seconded by Levine

Ayes: Levine, Kellogg, Robertson, Stehr, Henn

Noes: None

Absent: Thiel

Resolution 275-SU-08

WHEREAS, Mr. Suk Won Chung is requesting a Second Unit Permit with Parking Exception to convert part of the basement level into an approximately 696 sq. ft. 2-bedroom rent-restricted second unit located at 128 Moraga Avenue, Piedmont, California; 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 17D.6(b)2 of the Piedmont City Code:

1. The parking exception will not be detrimental to the health, safety or general welfare of persons residing in the neighborhood and will not negatively impact traffic safety or emergency vehicle access to residences or create hazards by obstructing view to or from adjoining sidewalks and streets. Moraga Avenue can accommodate one on-street parking space for the second unit without impacting traffic flow or neighborhood safety.

2. The parking exception will not adversely affect the character of the surrounding neighborhood. Moraga Avenue is already very busy and one additional parking space does not represent a significant change. In addition, on-street parking will be supplemented by access to nearby public transit.

3. There is sufficient street parking available to accommodate the parking exception and the second unit is located within 1/3 mile of public transit stops along Moraga and Grand Avenues.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves a Second Unit Permit with Parking Exception for Mr. Chung at 128 Moraga Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

1. Prior to the issuance of a building permit the completed, signed and notarized "Declaration of Restrictions – Property with Approved Second Dwelling Unit" form shall be recorded;
2. Prior to the issuance of a building permit or second unit permit, the completed signed and notarized "Rent-Restricted Second Unit Affordable Rent Certification" form shall be recorded;
3. The second unit shall remain a very low income rent-restricted unit per the California Department of Housing and Community Development, 2008 State Income Limits, adjusted annually;
4. The annual City of Piedmont rental tax is waived for the first year. Thereafter, the property owners shall annually comply with all required rental taxes and fees;
5. In consideration of the exceptions granted and in order to maintain the affordable housing stock, an owner is prevented from terminating a rent-restricted second unit permit for 10 years after the date of the Planning Commission approval, unless the Planning Commission, at its discretion, approved the termination of the rent-restricted second unit permit;
6. Because this unit is approved within a structure that was approved to be modified under a different Design Review process on October 13, 2008 (in accordance with State law), this approval is subject to the conditions of approval required for that application (Application #08-0274);
7. The applicant shall make the existing 1-car garage functional for off-street parking by replacing the existing garage door with a new, electronically operated garage door. Pursuant to an Inspection Agreement between the Public Works Department and the applicant, the garage shall be inspected annually for parking functionality during the 10-year period of the rent-restricted second unit permit.

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 Kellogg, Seconded by Levine

Ayes: Levine, Kellogg, Robertson, Stehr, Henn

Noes: None

Absent: Thiel

**New House
Design Review
110 Ricardo Avenue**

Mr. George Ong is requesting new house design review to demolish the existing residence and garage and construct a new 2,240 sq. ft., 2-story residence with 3 bedrooms, 2-1/2 baths, a kitchen, living room, dining room, family room and office, over a 2-car garage excavated partially below grade under the house at the front. Also proposed are site modifications including a relocated driveway, new retaining walls, exterior lighting and landscaping. A similar application was denied, without prejudice, by the Commission on October 8, 2007.

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

Public testimony was received from:

Ivan Chiu, Project Architect, described the design changes made to the project in response to the October 2007 meeting.

Catherine Yap voiced appreciation for the design changes made to the new home and requested that project approval include the following conditions: (1) the two large trees to be removed along the property line bordering her home not be replaced so that the shading of her property is minimized; (2) the landscape plan include the planting of dense shrubbery along the property to maximize privacy, with said shrubbery to be approximately 6 ft. in height; (3) all contaminants associated with the demolition of the existing house be contained; (4) the construction management plan insure that access to her driveway is not blocked at night and that construction crews are careful not to damage her property during demolition and construction; and (5) the existing fence that separates the two yards be retained.

The Commission agreed that the redesign was responsive to Commission's October 2007 requests in reducing height, mass and bulk, the new house is now comparable in size with the neighborhood and the overall design is attractive and well detailed.

Resolution 278-DR-08

WHEREAS, Mr. George Ong is requesting permission to demolish the existing residence and garage and construct a new 2,240 sq. ft., 2-story residence with 3 bedrooms, 2-1/2 baths, a kitchen, living room, dining

room, family room and office, over a 2-car garage excavated partially below grade under the house at the front. Also proposed are site modifications including a relocated driveway, new retaining walls, exterior lighting and landscaping located at 110 Ricardo 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 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 necessary to reduce losses of ambient and reflected light. The proposal complies with Design Review Guidelines I-1, I-2, I-6, I-7, I-8, I-9, I-10, I-11 and I-12 in terms of its scale, mass, siting and architectural compatibility with the neighborhood, its preservation of existing neighbor views, its respect of visual and acoustical privacy of neighbors, its screened outdoor living space and maintenance of streetscape views.

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 overall height of the structure has been lowered through the revised location of the second level, change in roof slope and increased excavation.

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. There are several two-story homes in the neighborhood.

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 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. Ong for construction at 110 Ricardo 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 [\$75,000], 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, 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 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 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 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. **Arborist's Report.** Prior to the issuance of a building permit, the Applicant shall submit an Arborist's Report that includes tree preservation measures to preserve the two City Street Trees next to the proposed driveway and curb-cut. The tree preservation measures shall be on the appropriate sheets of the construction plans. The arborist shall determine if it is appropriate for the Arborist to be on-site during critical construction activities, such as initial and final grading to ensure the protection of the existing trees. The arborist shall document in writing and with photographs the tree protection measures during these critical construction phases. If some trees have been compromised, mitigation measures must be specified in writing, approved by City staff, and the implementation must be certified by the Project Arborist. At the conclusion of the project, prior to Final Inspection, the Arborist shall file a report to the City of Piedmont certifying that all tree preservation measures as recommended have been implemented to his/her satisfaction and that all retained trees have not been compromised by the construction.
18. **Mechanically Operated Garage Doors.** The garage doors shall be mechanically operated.
19. **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.
20. **Existing Fence.** The existing fence along the right side neighboring property that begins at the gate and runs to the rear of the property shall be maintained and if damaged during construction, said fence shall be replaced.
21. **Trees.** The two trees on the right side of the property bordering 114 Ricardo shall be removed as indicated on the plans and these trees shall not be replaced for a period of five years. No new trees shall be planted other than those set forth in the landscaping plan for a period of five years.

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 Henn

Ayes: Levine, Kellogg, Robertson, Stehr, Henn

Noes: None

Absent: Thiel

ADJOURNMENT

There being no further business, Chairman Stehr adjourned the meeting at 9:50 p.m.