

## **PIEDMONT PLANNING COMMISSION**

### **Regular Meeting Minutes for Monday, August 9, 2010**

A Regular Session of the Piedmont Planning Commission was held August 9, 2010, 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 July 30, 2010.

#### **CALL TO ORDER**

Chairman Robertson called the meeting to order at 5:00 p.m.

#### **ROLL CALL**

Present: Commissioners Jim Kellogg, Melanie Robertson, Bobbe Stehr and Alternate Commissioner Michael Henn

Absent: Commissioners Jonathan Levine and Clark Thiel (excused)

Staff: City Planner Kate Black, Assistant Planner Kevin Jackson and Planning Technician Sylvia Toruno

City Council Liaison: Councilmember Jeff Wieler

#### **CONSENT CALENDAR**

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

##### **Design Review 10 Lorita Avenue**

##### **Resolution 184-DR-10**

WHEREAS, Mr. Anthony Swei and Ms. Heather Chan are requesting permission to replace a previously approved 2-car garage with a new carport in the southeast corner of the property; modify the existing chimney; and make various window, door and exterior lighting modifications throughout located at 10 Lorita 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 project is categorically exempt under the California Environmental Quality Act, pursuant to Section 15301, Class 1(e) and 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-1, II-2, II-3, II-3(a) through (d), III-4, III-5, III-5(a), III-6, III-7 and III-7(a).
2. The design is appropriate, considering its effect on neighboring properties' existing views, privacy and access to direct and indirect light. The project complies with the above-referenced Design Review Guidelines

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. The project complies with the above-referenced Design Review Guidelines

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review application of Mr. Swei and Ms. Chan for construction at 10 Lorita 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  
121 Sea View Avenue**

**Resolution 186-DR-10**

WHEREAS, Mr. Cedric Chao and Ms. Margaret Fujioka are requesting permission to replace an existing fence with a new wood fence at the north side of the property located at 121 Sea View 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 project is categorically exempt under the California Environmental Quality Act, pursuant to Section 15301, Class 1(e) and 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. The project complies with Design Review Guidelines V-1 and V-5.
2. The design is appropriate, considering its effect on neighboring properties' existing views, privacy and access to direct and indirect light. The project complies with Design Review Guidelines V-1, V-2 and V-5.
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. The project complies with Design Review Guidelines V-7.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review application of Mr. Chao and Ms. Fujioka for construction at 121 Sea View 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.

**Second Unit Permit  
with Parking Exception  
172 Estates Drive**

**Resolution 192-SU-10**

WHEREAS, Ms. Keiko Kadoya is requesting permission to use a new 600 sq. ft., very low income second unit in the existing space below the garage that was previously used as a pool house, with a parking exception rent-restricted second unit at property located at 172 Estates Drive, Piedmont, California, which requires a second unit permit with parking exception.

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 project is categorically exempt under the California Environmental Quality Act, pursuant to Section 15301, Class 1(e) the proposal conforms with the criteria and standards of Section 17D.6 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, 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. There is a designated parking space on-site for this unit.
2. The parking exception will not adversely affect the character of surrounding neighborhood because the designated parking space for this unit is hidden from street view and is completely accessible in and out from the property.
3. There is sufficient street parking available to accommodate the parking exception or the second unit is located within 1/3 mile of a public transit stop. In addition to the on-site parking space, there is additional street parking available for this second unit if it is ever required. However, this second unit is only obligated to have one dedicated parking space.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the second unit with parking exception application of Ms. Kadoya at 172 Estates Drive,

Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

1. In compliance with Section 17D.5(g), 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. In compliance with Section 17D.6(d), prior to the issuance of a building permit, the completed, signed and notarized, *Declaration of Rent Restrictions for Second Unit Affordable to Very Low Income Households* form shall be recorded.
3. In compliance with Section 17D.6(e), prior to the occupation of the second unit, the completed, signed and notarized, *Rent Restricted Second Unit Affordable Rent Certification* form shall be submitted. The form shall be submitted annually to provide evidence of continued compliance with the California Department of Housing and Community Development State Income Limits for Alameda County.
4. The second unit shall remain a very low income rent-restricted unit per the California Department of Housing and Community Development State Income Limits, adjusted annually for a period of 10 years from the date of this approval. Thereafter, the unit shall no longer be required to be a rent-restricted unit, but may continue to be used as a second unit.
5. 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.
6. The Building Official shall make a thorough inspection of the unit to determine compliance with the current Building Code, and with any other building requirements determined by the Piedmont Building Official to be related to the safety of occupants. All building code requirements for habitation as a second unit must be met. Related modifications to the exterior, if any, shall be subject to Administrative Design 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.

**Variance**  
**201 Crocker Avenue**

**Resolution 197-V-10**

WHEREAS, Mr. and Mrs. Srikant Misra are requesting permission to alter the existing 4-bedroom, 2-story over basement house by adding 1,031 sq. ft. through a multi-level addition to the rear and north and a second story garage addition for a resulting 5,148 sq. ft. 5 bedroom

house. The proposed construction includes window, door, skylight and garage door modifications; a new upper level rear deck; an expanded garage; removal of a chimney; various interior changes; new exterior lighting; a new rear terrace; and a new south yard terrace with fountain located at 201 Crocker 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 20 ft. north side street 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 project is categorically exempt under the California Environmental Quality Act, pursuant to Section 15301, Class 1(e);
2. The underlying lot and existing improvements present unusual physical circumstances, including but not limited to the garage is already within the side yard setback on a corner lot. The upper level expansion is designed to minimize the mass toward the street, with the majority of the bulk facing toward the interior of the yard. The design maintains the original architecture and style of the existing residence. 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.
3. The variance is compatible with the immediately surrounding neighborhood and the public welfare because there is a similarly situated house next door with a 3-car side entry garage and an architecturally significant similar style.
4. Accomplishing the improvement without a variance would cause unreasonable hardship in planning, design, or construction because it is a good use of the existing layout and building footprint.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the variance application of Mr. and Mrs. Misra for the above variance at 201 Crocker 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  
201 Crocker Avenue**

**Resolution 197-DR-10**

WHEREAS, Mr. and Mrs. Srikant Misra are requesting permission to alter the existing 4-bedroom, 2-story over basement house by adding 1,031 sq. ft. through a multi-level addition to the rear and north and a second story garage addition for a resulting 5,148 sq. ft. 5 bedroom house. The proposed construction includes window, door, skylight and garage door modifications; a new upper level rear deck; an expanded garage; removal of a chimney; various interior changes; new exterior lighting; a new rear terrace; and a new south yard terrace with fountain located at 201 Crocker 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 and arrangements of structures on the parcel. 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. The house to the south is well over 17 feet away and along the right property line, the roof ridge is over 7 feet. The project complies with Design Review Guidelines II-1, II-2, II-3, II-3(a) through (d), II-4, II-5, II-6, II-6(a) through (c), II-7 and II-7(a).
2. The proposed upper level addition/expansion has been designed in a way that reasonably minimizes view and light impacts on neighboring properties. All of the second story addition faces toward the interior of the property and does not affect any neighbors. The project complies with the above-mentioned Design Review Guidelines.
3. The size and height of the addition is commensurate with the size of the lot and is in keeping with the existing neighborhood development pattern. There are several significantly sized houses in the neighborhood. The project complies with the above-mentioned Design Review Guidelines as well as III-1, III-2, III-2(a), III-3, III-4, III-5, III-5(a), III-6, III-6(a), III-7 and III-7(a).
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. 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. and Mrs. Misra for construction at 201 Crocker 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. **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.

4. **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.

5. **Consultant Cost Recovery.** In order to accommodate the scope and nature of the Project proposed by the Applicant, should the City deem it necessary to retain independent consultants with specialized expertise, the Applicant shall, at the time the Director of Public Works deems it to be necessary, 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.

6. **City Attorney Cost Recovery.** Should there be 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.

7. **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.

8. **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.

9. **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.

10. **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.

11. **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.

12. **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.

13. The new exterior light fixtures shall be downward-directed with an opaque or translucent shade that completely covers the light bulb.

14. The new garage doors shall be electronically operated.

15. No new swimming pool is approved as part of this application.

16. The new terrace surface material shall not be a light or reflective color.

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 Stehr, Seconded by Kellogg  
Ayes: Kellogg, Robertson, Stehr, Henn  
Noes: None  
Absent: Levine, Thiel

#### **PUBLIC FORUM**

There were no speakers for the public forum.

#### **APPROVAL OF MINUTES**

##### **Resolution 13-PL-10**

RESOLVED, that the Planning Commission approves as submitted its meeting minutes of July 12, 2010.

Moved by Kellogg, Seconded by Stehr

Ayes: Kellogg, Robertson, Stehr

Noes: None

Abstain: Henn

Absent: Levine, Thiel

#### **REGULAR CALENDAR**

The Commission considered the following items of regular business:

##### **Variance, Design Review & Retaining Wall Design Review 201 Park Way**

Mr. and Mrs. Jim Riddiough are requesting variance, design review and retaining wall design review to expand their residence. Modifications to the previously submitted plans involve changes to the massing and exterior of the house, the interior room arrangement, retaining walls and landscaping. The requested variance is from Section 17.10.6 to allow the new wall and trellis to extend to within 15'1" and 14'2", respectively, to the front property line in lieu of the code required minimum front yard setback of 20 feet. This application was continued from the June 14 meeting.

Written notice was provided to neighbors. **Two affirmative, five negative response forms** were received. **Correspondence** was received from: Nat Dodge, Aug. 5; William Holland, Aug. 5

**Correspondence** was received from: Lisa & Jim Riddiough;

**Public testimony** was received from:

Jim Riddiough emphasized his belief that his neighbors' continuing objections to the redesigned project are unreasonable and inappropriate, stressing that the project has been redesigned to minimize any sun/shadowing impacts on neighboring properties. He also strongly objected to his neighbors' insistence on controlling the height of his privacy landscaping. He urged that his significant design compromises and neighbor mitigation measures be recognized and that his application be approved.

Lisa Joyce, Project Architect, summarized her discussions with the Welmonds in an attempt to mitigate their concerns, described the proposed reductions in the addition's size and bulk intended to minimize impacts on adjacent neighbors, noted that the addition is between 26 and 30 ft. away from the Welmond's home and the redesign reflects significant compromises made by the applicants in order to protect neighbor privacy. In response to a question, Ms. Joyce stated

that a complete boundary survey of the applicant's property was conducted in April and the proposed plans conform to this survey.

Nat Dodge voiced concern over the potential loss of privacy should the applicants remove an existing hedge/vegetation screen along the north property line bordering his property. He requested that this vegetation be maintained as a condition of project approval, also citing the potential of a lot line controversy between himself and the applicants as a result of conflicting survey results. The Commission discussed the survey controversy and hedge location with Mr. Dodge, noting that it appears that the hedge/vegetation appears to be well within the applicant's property.

Andrew and Kenna Welmond felt that the redesign still negatively impacted their morning sunlight and privacy and that previous requests to lower the height of the proposed addition have been ignored. They felt that the applicants' intent to allow the existing hedges along the shared property line to grow considerably taller will negatively impact the value and enjoyment of their home by creating a dark, looming presence over their property. They also felt that these tall hedges will impact public safety by decreasing pedestrian/traffic sight lines and creating hiding places for potential burglars. They requested that the hedge height be limited to a maximum height of 9 feet as a condition of project approval.

Bill Holland, architect retained by the Welmonds, relayed his clients' appreciation for the changes in the addition's size and placement, agreeing that the redesign has mitigated previous concerns over loss of light and privacy. However, he felt that the applicants intent to provide privacy to the newly proposed roof terrace by increasing the existing hedge height was unnecessary and inappropriate in terms of negative impacts on the Welmond property. He suggested that roof terrace privacy be provided by placing landscaping screening directly on the terrace. He requested that the hedge height be restricted to a maximum height of 9 feet.

Owen Erickson thanked the Commission for all its efforts in maintaining the architectural quality and beauty of Piedmont.

The Commission commended the applicants on their redesign, agreeing that it was responsive to Commission requests and well integrated and beautifully designed to minimize massing, light and privacy impacts on adjacent properties. In particular, the Commission noted that: (1) the roof terrace provides a reasonable transitional solution for accessing the patio, without any adverse impact on the Welmond's privacy -- the terrace does not overlook the Welmond property because the existing hedge screens this terrace from view; (2) the relationship of the bedroom window in terms of the Welmond property is appropriate and commonplace in Piedmont neighborhoods; (3) hedge height restrictions are difficult and impractical to enforce. A better option is for the two neighbors to work out between themselves an agreeable trimming arrangement; (4) the applicants are entitled to the property within their surveyed boundaries; (5) the project has no privacy impacts on the rear (north) neighbor because of the depth of the yard. There is no proposed construction that affects the north property line; and (6) overall, the project as designed has very minimal impact on adjacent neighbors.

As to the variance application, the City Planner clarified that the variance approved by the Commission at the March 8, 2010, meeting (and upheld on appeal by the City Council) specifically indicated the distances the existing house wall and proposed trellis would encroach into the front setback based upon submitted plans. However, based on the applicants' subsequent survey, the location of the front property line was incorrectly shown on the original plans. The plans have now been revised to correctly indicate property line locations and the new plans reflect the proper location of the front property line in relation to existing and proposed construction. As a consequence, the front setback encroach is now less than what was originally approved on March 8. The Commission has two options for clarifying this discrepancy. It can either:

1. Make it clear in the record that the March 8, 2010, approval was related to the actual physical relationship of the existing and proposed features, as opposed to the dimensions given in the findings. Under this option, since no variance is required, the new variance fee will be returned to the applicant; or
2. Reapprove the variance, noting the new dimensions between the wall and trellis to the front property line.

The Commission preferred Option 1.

**Resolution 14-PL-10**

RESOLVED, that the Planning Commission amends Variance Resolution 40-V-10, adopted March 8, 2010, to insert the following corrected dimensions into Finding #2:

"2. The underlying lot and existing improvements present unusual physical circumstances, including but not limited to the fact that the house already sits in the front yard setback at ~~16 feet 7 inches~~ 15 feet 1 inch and it is moving to ~~15 feet 8 inches~~ 14 feet 2 inches to the front of the trellis and is slightly larger roof over the entry. The trellis, because of where it is sitting, provides a simple softening of the garage facade. It is not living space. 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"; and

RESOLVED FURTHER, that the Commission makes this amendment in recognition of the fact that its March 8 approval of this variance was based on the relationship of the wall and proposed trellis to the front property line rather than the actual dimension of the encroachment into the front setback; and

RESOLVED FURTHER, that the Commission directs that a variance fee refund should be issued to Mr. and Mrs. Jim Riddiough since no new variance application is required in connection with their current submittal for proposed construction at 201 Park Way, Piedmont, California.

Moved by Stehr, Seconded by Kellogg

Ayes: Kellogg, Robertson, Stehr, Henn

Noes: None

Absent: Levine, Thiel

**Resolution 40-DR-10**

WHEREAS, Mr. and Mrs. Jim Riddiough are requesting permission to modify a previously submitted plan involving changes to the massing and exterior of the house, the interior room arrangement, retaining walls and landscaping located at 201 Park Way, 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 project is categorically exempt under the California Environmental Quality Act, pursuant to Section 15301, Class 1(e) and 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. The house maintains a simple clean facade and overall style. It is consistent with the houses on the north side of Park Way even though the neighborhood has a mix of architectural styles -- the other side of the street has a variety of styles and sizes. The siting on the property is compatible with the neighborhood, particularly with the adjacent Park Way neighbors. The front yard setback is compatible with all the neighbors on that side of the property and it reasonably minimizes impact on the sunlight and openness for neighbors in all directions -- particularly to the west and east but also to the north and south neighbors. The project complies with Design Review Guidelines, as it pertains to both new home construction or renovation of existing construction. As new home construction, the project complies with Design Review Guidelines I-1, I-1(a) through (d), I-2, I-2(a) through (d), I-5, I-6, I-7, I-8, I-9, I-9(a), I-10, I-11 and I-12. As an addition, the project complies with Guidelines II-1, II-2, II-3, II-3(a) through (d), II-4, II-5, II-6, II-6(a) through (c) and II-7. The proposed retaining walls comply with Guidelines IV-1, IV-1(a) & (b), IV-2, IV-2(a), IV-3, IV-3(a), IV-5 and IV-6.

2. The proposed new multi-level 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 and ridge direction. The project satisfies all the guidelines referenced above for either new or remodeled construction.

3. The size and height of the addition is commensurate with the size of the lot and is in keeping with the existing neighborhood development

pattern. The proposal is a modest expansion which uses the topography well. The height of the roof has been changed from hip to mitigate light loss. The whole house respects or exceeds all setbacks and falls within allowable coverages as either new or remodeled construction. The project complies with the aforementioned Design Review Guidelines.

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. There is no change in existing circulation patterns. The garage is being made code compliant and the small retaining walls do not obstruct sight lines. The project complies with Design Review Guidelines IV-1, IV-2, IV-2(a) and IV-6.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review application of Mr. and Mrs. Riddiough for construction at 201 Park Way, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

1. **Approved Plans.** The approved plans are those submitted on July 29, 2010, after neighbors were notified of the project and the plans were available for public review.

2. **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.

3. **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.

4. **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.

5. **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.

6. **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. Payment for this shall be provided by the applicant at the time of the Building Permit submittal.

7. **Renovation / New Construction.** Pursuant to Section 17.32.6 of the Municipal Code, if for any reason more than 70% of the physical structure (as determined by the Building Official) is demolished or destroyed, the building shall conform to new Building Code requirements, including, but not limited to, the installation of a fire sprinkler system. Should this occur during demolition without the prior approval of the Chief Building Official, a new hearing and public review by the Planning Commission may be required. Should Building Official determine that more than 70% of the physical structure will be demolished, the following 3 conditions (a, b and c) shall apply:

a. **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 \$50,000, 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.

i. 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, Park Way and Hillside Avenue and all other 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.

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



b. **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.

i. 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.

ii. 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.

iii. 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.

c. **City Attorney Cost Recovery.** Should there be 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.

8. **Consultant Cost Recovery.** In order to accommodate the scope and nature of the Project proposed by the Applicant, should the City deem it necessary to retain independent consultants with specialized expertise, the Applicant shall, at the time the Director of Public Works deems it to be necessary, 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. **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.

10. **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.

11. **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.

12. **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.

13. **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.

14. **Final Landscape Plan.** The Applicant shall provide a Final Landscape Plan that shows trees proposed for retention as well as any in-lieu trees. Such final plan shall also comply 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. The plan should include at least 6-foot tall evergreen shrubs between the applicants' house and the western property that should be maintained for a period of 10 years. The Final Landscape Plan shall be subject to staff review and approval prior to the issuance of a building permit.

15. **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.

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 Stehr, Seconded by Kellogg

Ayes: Kellogg, Robertson, Stehr, Henn

Noes: None

Absent: Levine, Thiel

**Variance, Design  
Review and Second  
Unit Permit with  
Parking Exception  
249 Scenic Avenue**

Mr. and Mrs. Roger Eliassen are requesting variance, design review and second unit permit. The variance and design review application proposes to enlarge the dining room bay; construct two main-level rear decks; make window and door modifications; add exterior lighting; and make hardscape improvements. The second unit permit proposes to convert the garage basement into an approximately 384 sq. ft. rent-restricted second unit. A variance from the parking requirements of Chapter 17D of the Piedmont City Code are required in order to add a Second Unit without supplying conforming parking.

Written notice was provided to neighbors. **Five negative response forms** were received. **Correspondence** was received from: Mohammed Hill, August 9.

Chairman Robertson recused herself from discussion and action on this application and left the chambers.

**Public testimony** was received from:

Roger Eliassen described the proposed improvements, noting in particular that the proposed new deck will be farther away from his downhill neighbor than the existing deck, thus improving the privacy situation for both himself and his neighbor. With regard to the second unit, he stressed his efforts over the years to insure that all cars associated with his property are parked on-site. The property has a 2-car garage and ample space on the driveway to park three additional cars. He added that because of the second unit's small size and location near his master bedroom, it is his intention to have the second unit occupied by only one person -- possibly a grad student or health care provider. Per the lease, he will require the second unit tenant to park his/her car on site.

Mike Marsh, Project Architect, submitted photographs supporting his contention that the new decks will have beautiful views without overlooking any neighboring homes. As to the second unit, there will be no significant changes to the existing exterior appearance of the property. He emphasized that the existing garage can accommodate the parking of two cars. The variance is required only because the length of the garage is slightly shorter than the dimension required in the code. The parking area available on the driveway which will be used by the second unit tenant is not visible from Scenic Avenue because of the change in elevation.

Mohammed and Esther Hill voiced concern that the proposed second unit could impose parking congestion and/or potential ingress/egress safety hazards for neighboring properties. They acknowledged the existing parking/traffic congestion along Scenic, stressing the safety hazards this congestion poses to neighborhood children because of the absence of sidewalks. They also voiced concern over ingress/egress by emergency personnel. Mr. Hill requested that the second unit component of the application be reviewed by the City's police and fire departments. He also requested that tenant parking on-site be required via restrictive covenant rather than through the lease agreement. The City Planner responded that the application was reviewed by the fire and police departments. Neither department had any specific concerns, provided tenant parking is on-site.

Kevin Fall concurred with the Hill's concerns regarding parking congestion.

Liz Laub referred to her response form in citing her concerns that second unit tenant parking could exacerbate the already congested nature of the neighborhood's on-street parking situation. She urged that if the second unit is approved, it be subject to the condition that tenant parking must occur on the applicant's property.

Kenneth Lim also concurred with previous speakers regarding the congested parking situation along Scenic Avenue in requesting that the second unit not be approved. He cited existing safety issues facing pedestrian traffic in the neighborhood because of the narrowness of the roadway and the absence of sidewalks. Later in the discussion, Mr. Lim advised the Commission that the applicant uses a portion of Mr. Lim's property in order to access his driveway. The City Planner responded that without a survey, the accuracy of this statement cannot be verified. Mr. Eliassen agreed that since his house has existed since 1910, he may indeed have a prescriptive easement across a portion of Mr. Lim's property in order to access his garage. He added that this issue has never been raised in the past. He did note his intention to have his property surveyed in the near future.

Bill Budge cited concerns over the loss of privacy to his rear deck from the applicant's proposed new decks.

The Commission supported application approval, agreeing that the design of the new decks is in keeping with the existing residence and there is minimal privacy impact on downhill neighbors given the separation distance and the fact that additional landscaping can be planted by either or both the applicant and his neighbors to provide any additional privacy that may be desired. The Commission further agreed that parking variance approval is justified given that the existing 2-car garage can accommodate the parking of two vehicles -- the depth of the garage is only 7 inches shorter than the dimension required by code. As to the second unit, the Commission agreed that the size, location and layout of the unit is appropriate, it will not be visible to the general public, approving second units is in the best interest of the City in helping to achieve regional housing goals and the application provides on-site parking for this unit, albeit not covered parking as required by the code. The proposed parking plan is workable and indicates ample on-site parking for both the main residence and the second unit.

#### **Resolution 43-V-10**

WHEREAS, Mr. and Mrs. Roger Eliassen are requesting permission to enlarge the dining room bay; construct two main-level rear decks; make window and door modifications; add exterior lighting; and make hardscape improvements located at 249 Scenic 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 allow a residence with 5 rooms eligible for use as a bedroom with two covered, non-tandem parking spaces each measuring 9'4" by 19'5" in lieu of the code required minimum parking space dimension of 9 ft. by 20 ft.; 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 project is categorically exempt under the California Environmental Quality Act, pursuant to Section 15301, Class 1(e).

2. The underlying lot and existing improvements present unusual physical circumstances, including but not limited to the location and original construction of the 2-car garage which limits the options for expanding this garage. 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.

3. The variance is compatible with the immediately surrounding neighborhood and the public welfare because the length of the garage is only 7 inches short of the depth required by code and is of sufficient length to accommodate the parking of vehicles within this garage. In addition, there are multiple other parking spaces on the property.

4. Accomplishing the improvement without a variance would cause unreasonable hardship in planning, design, or construction because it would be unreasonable to consider the existing garage as unsuitable for satisfying off-street parking needs because of a 7-inch deficiency in length. Expanding the existing 2-story garage on a downhill slope in order to add 7 inches of length would be an unreasonable construction hardship.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the variance application of Mr. and Mrs. Eliassen for the above variance at 249 Scenic 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 Henn, Seconded by Kellogg

Ayes: Kellogg, Stehr, Henn

Noes: None

Recused: Robertson

Absent: Levine, Thiel

#### **Resolution 43-DR-10**

WHEREAS, Mr. and Mrs. Roger Eliassen are requesting permission to enlarge the dining room bay; construct two main-level rear decks; make window and door modifications; add exterior lighting; and make hardscape improvements located at 249 Scenic 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 they comply with Design Review Guidelines II-1 and II-3. The proposed improvements are compatible with the existing house.
2. The design is appropriate, considering its effect on neighboring properties' existing views, privacy and access to direct and indirect light because there is a significant distance between neighboring property at the rear. The project complies with Design Review Guideline II-5.
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 will be sufficient parking on-site for the main residence and the small second unit. There is space for the turning around of a vehicle to allow a driver to exit the property going forward.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review application of Mr. and Mrs. Eliassen for construction at 249 Scenic 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 or translucent shade that completely covers the light bulb.
2. 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.
3. Applicant shall implement stormwater treatment Best Management Practices 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.

4. The applicant shall, pursuant to a form of agreement prepared by the City Attorney and executed by the applicant, defend, at the 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 the 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.

5. Should the project meet the requisite threshold, compliance with Chapter 9 Article III of the Municipal Code, which governs the recycling of construction and demolition debris, will be required for all phases of this project.

6. 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.

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 Henn, Seconded by Kellogg

Ayes: Kellogg, Stehr, Henn

Noes: None

Recused: Robertson

Absent: Levine, Thiel

**Resolution 44-SU-10**

WHEREAS, Mr. and Mrs. Roger Eliassen are requesting permission to convert the garage basement into an approximately 384 sq. ft. rent-restricted second unit. A variance from the parking requirements of Chapter 17D of the Piedmont City Code are required in order to add a Second Unit without supplying conforming parking located at 249 Scenic Avenue, Piedmont, California, which construction requires a second unit permit with parking exception; 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 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. There will be minimal adverse impact on the neighborhood because the property has a 2-car garage, a potential parking apron in front of the garage as well as two or more spaces within the driveway that can accommodate the normally expected number of cars. It is recognized that the immediate neighborhood is parking deficit and as a condition of second unit approval, parking for this unit will be required to be on-site.
2. The parking exception will not adversely affect the character of surrounding neighborhood because the parking for the second unit will be provided on-site. Said parking will be in the existing garage or driveway.
3. There is sufficient street parking available to accommodate the parking exception or the second unit is located within 1/3 mile of a public transit stop. Parking for the second unit will be provided on-site as indicated and designated on the submitted site plan. Said parking has been demonstrated to be workable and will enable the second unit car to exit the driveway front-facing. No second unit parking is allowed on Scenic Avenue.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the second unit with parking exception application of Mr. and Mrs. Eliassen for construction at 249 Scenic Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

1. In compliance with Section 17D.5(g), 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. In compliance with Section 17D.6(d), prior to the issuance of a building permit, the completed, signed and notarized, *Declaration of Rent Restrictions for Second Unit Affordable to Very Low Income Households* form shall be recorded.
3. In compliance with Section 17D.6(e), prior to the occupation of the second unit, the completed, signed and notarized, *Rent Restricted Second Unit Affordable Rent Certification* form shall be submitted. The form shall be submitted annually to provide evidence of continued compliance with the California Department of Housing and Community Development State Income Limits for Alameda County.
4. The second unit shall remain a very low income rent-restricted unit per the California Department of Housing and Community Development State Income Limits, adjusted annually for a period of 10 years from the date of this approval. Thereafter, the unit shall no longer be required to be a rent-restricted unit, but may continue to be used as a second unit.

5. 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.
6. Compliance with conditions 1-6 if the second unit application (#10-0044) is approved and application #10-0043 for design review is not approved.
7. Prior to the issuance of final approval of the building permit for the second unit, the Building Official shall verify that the existing 2-car garage is available for the parking of two vehicles.
8. The applicant shall prepare a recordable agreement that parking for the second unit must be provided on-site. Said agreement shall be subject to City Attorney review and approval. The designated parking space for the second unit shall be maintained for the duration of the second unit.
9. The applicant shall enter into a garage inspection agreement with the City providing, upon proper advance notice, periodic City inspections of the garage to insure that the two parking spaces within this structure are being maintained for off-street parking.

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 Henn, Seconded by Kellogg

Ayes: Kellogg, Stehr, Henn

Noes: None

Recused: Robertson

Absent: Levine, Thiel

The Commission recessed at 7:40 p.m. for a dinner break.

**Variance and  
Design Review  
312 Blair Avenue**

Mr. and Mrs. Morgan Gunst are requesting variance and design review to replace a main level deck at the southwest corner of the property with a new 2-car garage and deck above. The application also proposes to construct a new trellis atop the new deck; add new stairs; add exterior lighting; and make other on-grade hardscape improvements. The requested variances are from: (1) Section 17.10.4 to allow a structure coverage of 43.4% in lieu of the code permitted maximum of 40%; (2) Section 17.10.7 to allow the garage and deck atop to extend to within 3 ft. from the right side property line in lieu of the code required minimum of a 4 ft. side yard setback; and (3) Section 17.10.8 to allow the new deck to extend to approximately 1 foot of the rear property line in lieu of the code required minimum of a 4 ft. rear yard setback.

Written notice was provided to neighbors. **Seven affirmative, two negative response forms** were received. **Correspondence** was received from: William King & Patricia Radez

**Public testimony** was received from:

Alex Gunst read a prepared statement describing his proposed project and responding to the six objections contained in King/Radez' letter of opposition. He stated that a recent survey of the entire block indicated that the property lines of 210 Hillside are as indicated on his recorded survey. He stated that the variances are required in order to construct a conforming 2-car garage on one of the smallest lots in the neighborhood. He emphasized that because his property has no rear yard, the proposed replacement deck is the property's only outdoor living space.

Will King supported the construction of a 2-car garage but urged that the replacement deck be made code conforming so that it no longer encroaches into the rear setback as does the existing deck. He cited privacy and acoustical reasons for requesting that the deck be pulled back out of the setback. He also summarized his dispute with the applicant regarding south side property line location and retaining wall replacement responsibility, believing that the retaining wall should be replaced prior to the construction of the garage and noting a discrepancy in property line location from two different surveys.

The Commission discussed with Mr. Gunst possible design changes to reduce or eliminate garage/deck encroachment into the rear yard setback. Suggestions mentioned included: eliminating the deck stairs and/or pulling the garage more forward on the property. In the end, Mr. Gunst felt that he could relocate and reconfigure the garage so as to preserve the outside stair and minimize the extent of rear yard setback encroachment -- an encroachment would only be required in connection with the transition of the wall from the stair to the edge of the existing window. This modification was acceptable to Mr. King as a means of mitigating his privacy/acoustical concerns, provided he had an opportunity to review the revised design. As to the side yard variance, the Commission supported variance approval for the garage but felt that the deck above should be pulled back so that this component maintains a 4 ft. setback from the property line. The Commission supported approval of the structure coverage variance as proposed, agreeing that both the side yard and coverage variances are pre-existing and unavoidable given existing conditions on the property. As a whole, the Commission agreed that the design of the improvements were attractive and in keeping with the existing residence and the creation of a conforming 2-car garage was beneficial to both the applicant and the neighborhood. As to the retaining wall issue, the Commission acknowledged that this is a private, civic matter between neighbors, not within the purview of the Commission and in any case not directly affected by the proposed garage/deck construction.

**Resolution 160-V-10**

WHEREAS, Mr. and Mrs. Morgan Gunst are requesting permission to replace a main level deck at the southwest corner of the property with a new 2-car garage and deck above and construct a new trellis atop the new deck; add new stairs; add exterior lighting; and make other on-

grade hardscape improvements located at 312 Blair Avenue, Piedmont, California, which construction requires variance and design review; and

WHEREAS, variances from the requirements of Chapter 17 of the Piedmont City Code are necessary in order to: (1) exceed the City's structure coverage limit; (2) construct a conforming 2-car garage within the right (west) side yard setback. (This variance approval does not apply to the position of the wall that surrounds the deck above the garage); and (3) construct within a minor strip of the rear (south) yard 4-foot setback in order to transition from the garage to the existing window on the southwest corner of the home; 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 project is categorically exempt under the California Environmental Quality Act, pursuant to Section 15301, Class 1(e)
2. The underlying lot and existing improvements present unusual physical circumstances, including but not limited to the fact that the existing home already exceeds the structure coverage maximum and is approximately within 1 foot of the south property line. Because of existing site conditions, the construction of a code compliant garage necessitates a side yard, rear yard variance and a structure coverage variance. 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.
3. The variances are compatible with the immediately surrounding neighborhood and the public welfare because the essence, scale and mass of the existing home is not changed by the proposed improvements. The project is compatible with the surrounding neighborhood.
4. Accomplishing the improvement without variance would cause unreasonable hardship in planning, design, or construction because no additional structure would be permitted without a structure coverage variance and constructing a code compliant garage would not be possible without variance.
5. 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 because the proposed addition is respectful of the context of the existing architecture of the home and the physical siting and location of the existing home. The project complies with Design Review Guidelines II-1, II-2, II-3, II-3(a) & (b), II-4, II-5, II-6 and II-7.
6. 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) because the structure is only the deck over the top the garage, the garage has no impact, the deck is enclosed with a wall which meets design guidelines and also protects privacy between the applicant's property and neighboring property. The project complies with Design Review Guidelines II-2, II-3(a) & (b).

7. The size and height of the addition is commensurate with the size of the lot and is appropriate regarding the current mass and size of the existing home. The project complies with Design Review Guidelines II-1, II-2, II-3, III-1 and III-3.

8. 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. The location of the garage, the configuration of the driveway and the position of the curb-cut on Blair Avenue provide appropriate ingress/egress to the 2-car garage. The project complies with Design Review Guideline III-7.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the variance and design review application of Mr. and Mrs. Gunst for proposed construction at 312 Blair 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 Blair Avenue;
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:
    - iii. Completion of Excavation;
    - iv. Completion of Retaining Walls;
    - v. Completion of Foundation;
    - vi. Completion of Rough Framing;
    - vii. Completion of Electrical;
    - viii. Completion of Plumbing;
    - ix. Completion of Mechanical;
    - x. Completion of Fire Sprinklers;
    - xi. Completion of Home;
    - xii. 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. **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.
4. The design of the garage and deck be modified, subject to Staff Design Review, so that: (a) the garage is relocated to the north by approximately 1'8" so as not to encroach into the 4 foot rear yard setback. There will only be a transitional strip that would connect the edge of the proposed stairway in the south rear yard setback with the adjoining window in the existing residence; and (b) the deck above the garage be modified so that it is compliant with the 4 foot side yard setback.

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 Stehr

Ayes: Kellogg, Robertson, Stehr, Henn

Noes: None

Absent: Levine, Thiel

**Design Review  
33 Tyson Circle**

Mr. and Mrs. Jacky Li are requesting design review to enclose the rear terrace for a 975 sq. ft. great room addition with a retractable roof and glass awning; modify the rear balcony railing; construct a 300 sq. ft. 2-story pool house addition and 1,050 sq. ft. pool deck addition with an outdoor kitchen and fireplace; make various changes to the interior of the house and pool house; make various site improvements through excavation and infill at the southeast quadrant of the property including various new retaining walls, fencing and railing; a new playground and golf play area; new paths and steps; and install new exterior lighting at the rear of the house, at the pool house and pool deck and golf play area. A related Staff Design Review Application was approved April 5, 2010, for this property to construct new site features at the front and right side yards, including: new retaining walls in the front and right side yards; a new fountain at the front porch; a new deck/dog house/trellis structure in the right side yard; and new exterior lighting.

Written notice was provided to neighbors. **Three negative response forms** were received. **Correspondence** was received from: Bindoo Rellan

**Public testimony** was received from:

Stefan Menzi, Project Architect, described the scope of the proposed project and addressed the concerns of the neighbor at 9 LaSalle Avenue. In particular, he described the proposed retaining walls, noting that a landscape plan will be submitted addressing how these walls and the proposed improvements will be screened by landscaping. He noted that there is at least a 25 foot separation distance between the proposed improvements and the neighbor's deck. Mr. Menzi stated that the property has been surveyed.

Sunit Gala, speaking on behalf of himself and several neighbors, voiced concern over loss of property value and safety, noting in particular concern over noise, wayward golf balls and retaining wall stability. He also emphasized the loss of privacy he and his neighbors will suffer as a result of such a large change in the existing condition/topography of the canyon area. He also noted uncertainty as to whether property line boundaries are being properly observed.

The Commission supported approval of the great room and pool house addition elements of the project, agreeing that they are compatible with the existing residence and consistent with the City's Design Review Guidelines. However, the Commission voiced concern over the extent of excavation/grading and the massive size of retaining walls being proposed in order to create level expanses of outdoor areas within the lot's natural canyon topography. The Commission noted concern regarding the impact such change would have on the neighborhood's drainage patterns as well as the fact that the extent of infill pushed the outdoor recreational areas too close to adjacent neighbors. As an alternative, the Commission suggested that consideration be given to utilizing cut and fill to place these areas closer to the applicant's home, away from neighboring homes. This approach would also reduce the overwhelming size and mass of required retaining walls. The Commission also felt that the proposed 8 ft. high lattice fence around an

elevated patio was too tall given its 6 foot distance from the property line. The Commission emphasized that given the large size of the property, a variety of design options exist to minimize impact on adjacent neighbors and the property's natural topography.

**Resolution 167-DR-10(a)**

WHEREAS, Mr. and Mrs. Jacky Li are requesting permission for an addition and modifications to their existing residence, an addition to the pool house and a new playground with its related stairway access, and install new exterior lighting at the rear of the house and at the pool house located at 33 Tyson Circle, 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 project is categorically exempt under the California Environmental Quality Act, pursuant to Section 15301, Class 1(e) and 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, the design of openings and architectural detailing are coordinated with the existing home and are within the scale, mass and proportion of the existing home. The project complies with Design Review Guidelines II-1, II-2, II-3 and II-3(a) & (b).
2. The proposed upper level addition/expansion has been designed in a way that reasonably minimizes view and light impacts on neighboring properties because it is located in the Estate Zone on a very large parcel. The proposed improvements will not have an impact on the view, light or privacy of any neighbor. The project complies with Design Review Guidelines II-1, II-2 and II-6.
3. The size and height of the addition is commensurate with the size of the lot and proportionate with the existing residence. Both the existing home and lot are very large. Proportionately, the addition is modest in scale and correctly integrated with the architecture. The project complies with Design Review Guideline II-1, II-2 and II-3.
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. There is no material effect on vehicular or pedestrian access. 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. and Mrs. Li for the construction elements referenced above at 33 Tyson Circle, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:



1. The approved plans are those submitted by July 22, 2010 with additional information submitted on July 29, 2010, after neighbors were notified of the project and the plans were available for public review.

2. **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.

3. **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:

- xiii. Completion of Excavation;
- xiv. Completion of Retaining Walls;
- xv. Completion of Foundation;
- xvi. Completion of Rough Framing;
- xvii. Completion of Electrical;
- xviii. Completion of Plumbing;
- xix. Completion of Mechanical;
- xx. Completion of Fire Sprinklers;
- xxi. Completion of Home;
- xxii. 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.

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 mitigate 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. **Stormwater Design .** Because this Project anticipates the addition or replacement of more than 10,000 square feet of impervious surface, the Applicant shall prepare a stormwater management plan prior to obtaining a building permit. Wherever possible and to the maximum extent practicable, the plan shall incorporate site design practices and measures to promote infiltration of stormwater and reduce the amount of impervious surface on the site as outlined in the following documents: The Bay Area Stormwater Management Agencies Association's (BASMAA) "Start at the Source" design guidance manual, which is available in PDF format at [www.cleanwaterprogram.org/businesses\\_developers.htm](http://www.cleanwaterprogram.org/businesses_developers.htm); BASMAA's "Permanent Post-Construction Stormwater BMP Fact Sheets;" or the State of California Best Management Practices Handbooks.

7. **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.

8. **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. Payment for this shall be provided by the applicant at the time of the Building Permit submittal.

9. **City Attorney Cost Recovery.** Should there be 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. **Consultant Cost Recovery.** In order to accommodate the scope and nature of the Project proposed by the Applicant, should the City deem it necessary to retain independent consultants with specialized expertise, the Applicant shall, at the time the Director of Public Works deems it to be necessary, 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.

11. **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.

12. **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.

13. **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.

14. **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.

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. **Final Landscape Plan.** The Applicant shall provide a Final Landscape Plan that shows trees proposed for retention as well as any in-lieu trees. Such final plan shall also comply 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. The Final Landscape Plan shall be subject to staff review and approval prior to the issuance of a building permit.

17. **California's Water Efficient Landscape Ordinance:** Applicants shall comply with the requirements of California's Model Water Efficient Landscape Ordinance that went into effect January 1, 2010. Should the project meet the ordinance compliance thresholds, the applicants shall submit the following required information to the Building Department:

- a. Landscape Documentation Package that includes the following 6 items:
  - i. Project Information;
  - ii. Water Efficient Landscape Worksheet;
  - iii. Soil Management Report;
  - iv. Landscape Design Plan;
  - v. Irrigation Design Plan; and
  - vi. Grading Design Plan.

The Landscape Documentation Package shall be subject to staff review and approval prior to the issuance of a building permit.

- b. Once a building permit has been issued, the applicant shall submit a copy of the Water Efficient Landscape

Worksheet, to the local water purveyor, East Bay Municipal Utility District.

c. After completion of work, a Certificate of Completion, including an irrigation schedule, an irrigation maintenance schedule, and an irrigation audit report shall be submitted to the City and the local water purveyor for review. This Certificate of Completion may be approved or denied by the City.

18. **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.

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.

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 Stehr

Ayes: Kellogg, Robertston, Stehr, Henn

Noes: None

Absent: Levine, Thiel

**Resolution 167-DR-10(b)**

WHEREAS, Mr. and Mrs. Jacky Li are requesting permission to construct a 1,050 sq. ft. pool deck addition with an outdoor kitchen and fireplace; make various site improvements through excavation and infill at the southeast quadrant of the property including various new retaining walls, fencing and railing; a new golf play area; new paths and steps; and pool deck and golf play area located at 33 Tyson Circle, 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 aforementioned components do not conform with the criteria and standards of Section 17.20.9 of the Piedmont City Code:

1. The exterior design elements are not commensurate with the existing topography, do not fit with the landscaping nor the natural condition on that segment of the property. The project fails to comply with all the

regulations in Section IV of the City's Design Review Guidelines. The proposed retaining walls fail to work with the existing topography. In addition the proposed fence adjoining the patio fails to comply with Design Review Guidelines V-1, V-2 and V-5.

2. The design is not appropriate, considering its effect on neighboring properties' existing views, privacy and access to direct and indirect light because the location of the retaining walls directly adjoining property lines has a direct adverse impact on adjacent neighbors' views, light and privacy. In addition, the proposal to change the topography of the lot and the natural look of the ravine to a level, terraced landscaped area also has an impact on the light and view of neighboring properties as well as not being commensurate with the essence of the existing, natural landscape. The project does not comply with Section IV of the City's Design Review Guidelines.

3. The size and height of the addition is not commensurate with the size of the lot and the natural flow of the landscaping because the retaining walls are significantly greater than 8 feet in height and are placed too close to the property line. The project does not comply with Section IV of the City's Design Review Guidelines.

4. The safety of residents, pedestrians, and vehicle occupants and the free flow of vehicular traffic are not adversely affected after construction. However, during construction there is a potential impact in terms of being able to maneuver soil and construction machinery into that portion of the property. This potential impact is not consistent with life safety and the points of ingress/egress during construction.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission denies, with prejudice, the design review application of Mr. and Mrs. Li for the aforementioned construction at 33 Tyson Circle, Piedmont, California, in accordance with the plans and specifications on file with the City.

Moved by Kellogg, Seconded by Stehr

Ayes: Kellogg, Robertston, Stehr, Henn

Noes: None

Absent: Levine, Thiel

**Design Review  
25 Pacific Avenue**

Mr. Tim Jones and Ms. Angel Chan are requesting design review to make substantial modifications to the existing residence involving: changes to the interior room arrangements including the addition of habitable square footage in the basement level; substantial changes to the exterior, including modifications to windows, doors, rooflines, the front stairs and the roof-deck trellis; the removal of certain features including the chimney, rear porch, front cantilever, and front bay window; and new features such as new siding, skylights, new landscaping and exterior lighting. The application also proposes the conversion of a non-conforming 1-car carport to a conforming 2-car garage. In addition, staff is requesting that the Commission consider an interpretation under Section 17.22.3 related to Floor Area Ratio.

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

**Public testimony** was received from:

Angel Chan stated as a new owner the project is intended to make the home suitable for her family. She noted the neighborhood's support for improving this long-rented, neglected property.

Arleta Chang, Project Architect, described the proposed improvements to restore the old home's original architecture and quality, make this home more suitable for modern family living and to add a conforming 2-car garage.

The Commission supported application approval, agreeing that the design is beautifully articulated, will greatly enhance the existing home and improve neighborhood aesthetics. The Commission noted that the existing home has multiple, pre-existing violations of the zoning code and the proposed project will diminish each existing noncompliance. The Commission also agreed that the reduction of building mass and decrease in the building envelope is within the intent of Section 17.22.3 which provides a floor area ratio exemption.

**Resolution 194-DR-10**

WHEREAS, Mr. Tim Jones and Ms. Angel Chan are requesting permission to make substantial modifications to the existing residence involving: changes to the interior room arrangements including the addition of habitable square footage in the basement level; substantial changes to the exterior, including modifications to windows, doors, rooflines, the front stairs and the roof-deck trellis; the removal of certain features including the chimney, rear porch, front cantilever, and front bay window; and new features such as new siding, skylights, new landscaping and exterior lighting. The application also proposes the conversion of a non-conforming 1-car carport to a conforming 2-car garage located at 25 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:

1. That the project is categorically exempt under the California Environmental Quality Act, pursuant to Section 15301, Class 1(e);
2. The existing residence has 5 rooms eligible for use as a bedroom with 1-covered parking space. The proposed project is re-arranging the rooms to maintain the 5 bedroom count and proposing a 2-car conforming garage rather than the 3 covered conforming parking spaces required by the code. However, this parking non-compliance is eligible for a special exception under Section 17.20.6 because the extent of the existing nonconformity is being reduced.
3. While new square footage is being created in the basement and the building envelope is being altered, the building envelope is actually being reduced with the removal of building mass at the southwestern corner. Therefore, the reduction of the building envelope is within the intent of Section 17.22.3 and no floor area ratio variance is required; and

3. The proposal conforms with the criteria and standards of Section 17.20.9 of the Piedmont City Code:
  - a. The exterior design elements are aesthetically pleasing as a whole and harmonious with existing and proposed neighborhood development in that it complies with Design Review Guidelines II-1, II-2, II-3, II-3(a) through (d), II-4, II-6, II-6 (a) through (c), II-7, III-2, III-3, III-4, III-5, III-5(a), III-6, III-6(a), III-7 and III-7(a).
  - b. The design is appropriate, considering its effect on neighboring properties' existing views, privacy and access to direct and indirect light because every improvement reduces existing bulk and mass. The project complies with the aforementioned guidelines.
  - c. The safety of residents, pedestrians, and vehicle occupants and the free flow of vehicular traffic will be improved by the creation of a usable 2-car garage. Existing points of ingress/egress are unchanged. The project complies with the aforementioned guidelines in addition to III-3, III-6, III-6(a), III-7 and III-7(a)

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review application of Mr. Jones and Ms. Chan for construction at 25 Pacific Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

1. **Approved Plans.** The approved plans are those submitted on July 28, 2010, after neighbors were notified of the project and the plans were available for public review.
2. **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.
3. **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.
4. **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.
5. **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.

6. **Renovation / New Construction.** Pursuant to Section 17.32.6 of the Municipal Code, if for any reason more than 70% of the physical structure (as determined by the Building Official) is demolished or destroyed, the building shall conform to new Code requirements, including, but not limited to, the installation of a fire sprinkler system. Should this occur during demolition, a new hearing and public review by the Planning Commission may be required.
7. **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.
8. **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.
9. **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.
10. **Encroachment Permit – Sewer Main.** Because of the unusual condition that a sewer main runs under the residence, and such location involves the conversion of a non-habitable basement space with a dirt floor to habitable use with suitable finishes including a concrete floor, the following must occur:
  - (a) prior to the issuance of a building permit and any excavation, the applicants, at their expense, shall videotape the existing sewer main and any laterals and submit a copy of the tape to the City for staff review. Said review shall determine the pre-construction condition of the sewer main prior to the commencement of excavation and/or construction. As part of the final inspection, the same sewer line shall be inspected as required by the Director of Public Works, who shall also determine if said sewer main was damaged as a result of the construction and therefore must be repaired at the applicants' expense;

- (b) the existing and potential new sewer lateral connection point shall be determined and approved by the Director of Public Works;
- (c) there shall be a minimum of three (3) feet of cover between the proposed concrete slab and the existing sewer main; and
- (d) prior to the issuance of a building permit, the applicants shall apply for an encroachment permit to allow for the construction over the City sewer main.

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 Stehr, Seconded by Kellogg

Ayes: Kellogg, Robertson, Stehr, Henn

Noes: None

Absent: Levine, Thiel

**Variance and  
Design Review  
45 Monticello Avenue**

Mr. and Mrs. Dave Reilly are requesting variance and design review to make various improvements to the residence including to: construct an approximately 65 sq. ft. upper level addition on the south (left) facade; make modifications to an existing rear deck; make window and door modifications; and other interior changes. The requested variances are from: (1) Section 17.10.7 to allow the upper level addition to extend to the left property line in lieu of the code required minimum of a 4 ft. side yard setback; and (2) Section 17.16 to allow a residence with 4 rooms eligible for use as a bedroom with 2 covered, non-tandem parking spaces measuring 17'5" by 35'5" in lieu of the code required minimum dimension of 18' by 20'.

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

**Public testimony** was received from:

Robert Kelly, Project Architect, described the proposed improvements. He noted that the existing basement room is currently being used as a bedroom, with an adjoining bath and there will be no change in this use. Therefore, he felt that the existing house should be considered a 4 rather than 3 bedroom residence. Under this interpretation, the current application is not proposing any increase in the home's current number of bedrooms. He also emphasized that the existing garage is of sufficient size to accommodate parking of two vehicles --it is only deficient in width by 7 inches. Mr. Kelly also summarized the various locations considered for the proposed new upper level bathroom, noting that for structural, interior layout and architectural integrity reasons,

locating this bathroom addition within the setback is the only feasible option. He noted that no neighbors have opposed the project.

The Commission discussed possible alternative locations for the proposed upper level bathroom, deciding in the end that the proposed location is the most logical given the home's interior layout and existing conditions on the property. However, the Commission agreed that the proposed design of the addition was not well integrated into the existing home and its plain "elevator shaft" design created a tacked on appearance. Therefore, the Commission requested that the wall of the bathroom addition be pulled back at least 2 feet from the south side property line so that a roof overhang and/or architectural detailing consistent with the rest of the house can be added to the exterior of this addition wall to better integrate the addition with the main house. Cantilevering the new bathroom addition was also mentioned as a possible design option. The Commission further agreed that a parking variance was justified given that the existing garage can accommodate the parking of two vehicles. However, the Commission requested that new garage doors and an automatic opener be installed on the garage to facilitate its use for off-street parking. The Commission acknowledged that while the existing basement room has been used for years as a bedroom, its substandard ceiling height made this room uninhabitable per the Building Code. Hence, the current proposal does involve the addition of a room eligible for use as a bedroom which in turns triggers the parking variance and the garage modifications necessary to mitigate the non-conforming parking situation.

On a motion by Commissioner Kellogg, Seconded by Commissioner Stehr and Carried, the Commission agreed to extend tonight's meeting to complete agenda consideration.

**Resolution 196-V-10**

WHEREAS, Mr. and Mrs. Dave Reilly are requesting permission to make various improvements to the residence including to: construct an approximately 65 sq. ft. upper level addition on the south (left) facade; make modifications to an existing rear deck; make window and door modifications; and other interior changes located at 45 Monticello Avenue, 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 left (south) side yard setback and to increase the number of rooms eligible for use as a bedroom without supplying conforming parking; 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 project is categorically exempt under the California Environmental Quality Act, pursuant to Section 15301, Class 1(e);
2. The underlying lot and existing improvements present unusual physical circumstances, including but not limited to the fact:

- with regard to the parking variance: that the garage is pre-existing and can accommodate the parking of two vehicles -- it is only deficient in width by 7 inches from being a code complying parking structure.
- with regard to the setback variance: the existing 1917 house is already located within the setback and there is no feasible, alternative location for a conforming bathroom addition on the upper level.

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.

3. The variances are compatible with the immediately surrounding neighborhood and the public welfare because the proposed improvements do not negatively impact the neighborhood. There is an existing reduced side yard on the same side and it would not have the appearance of being closer to the property line than what is existing.

4. Accomplishing the improvement without variance would cause unreasonable hardship in planning, design, or construction because it would necessitate the widening of an existing garage that can already accommodate the parking of two vehicles. The location of existing utilities and structural issues would make alternative locations for an upper level bathroom not feasible.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the variance application of Mr. and Mrs. Reilly for the above variances (as conditioned in Design Review Application 196-DR-10) at 45 Monticello 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 Henn, Seconded by Kellogg

Ayes: Kellogg, Robertson, Stehr, Henn

Noes: None

Absent: Levine, Thiel

#### **Resolution 196-DR-10**

WHEREAS, Mr. and Mrs. Dave Reilly are requesting permission to make various improvements to the residence including to: construct an approximately 65 sq. ft. upper level addition on the south (left) facade; make modifications to an existing rear deck; make window and door modifications; and other interior changes located at 45 Monticello

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 necessary to reduce adverse impacts on the appearance of the addition. As conditioned, the design will provide articulation on the south side of the house at the location of the bathroom addition. The project complies with Design Review Guidelines II-1 and II-3.

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) for the reasons cited above.

3. The size and height of the addition is commensurate with the size of the lot and is in keeping with the existing neighborhood development pattern. The existing house has an usually small side yard and, as conditioned, the upper level is being stepped back with a modified roof line to provide more architectural interest and articulation when viewed from the street. The project complies with Design Review Guidelines II-3(a) & (b).

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.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review application of Mr. and Mrs. Reilly for construction at 45 Monticello 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.
  - i. The Construction Completion Schedule with associated construction values for each benchmark shall set forth completion dates for the following benchmarks:
    1. Completion of Excavation;
    2. Completion of Retaining Walls;
    3. Completion of Foundation;
    4. Completion of Rough Framing;
    5. Completion of Electrical;
    6. Completion of Plumbing;
    7. Completion of Mechanical;
    8. Completion of Fire Sprinklers;
    9. Completion of Home;
    10. 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.
  - ii. 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.
  - iii. 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. **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.

4. **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.
5. The garage door shall have an electronic opener and found to be operational prior to final inspection in compliance with Design Review Guideline III-3;
6. The upper level bathroom wall shall be pulled back at least 2 feet from the south property line and architectural detailing consistent with the existing house shall be added. Said design modifications 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 Henn, Seconded by Stehr

Ayes: Kellogg, Robertson, Stehr, Henn

Noes: None

Absent: Levine, Thiel

**Draft Housing Element** The Commission resumed its July 12, 2010, consideration of the City's Draft Housing Element with the City's General Plan Consultant Barry Miller. Mr. Miller highlighted the requested changes to the Draft requested by the California Department of Housing and Community Development, noting that these changes were mostly minor in nature. Mr. Miller recommended that following the Commission's second public hearing and discussion of the Draft, it adopt proposed resolutions recommending City Council adoption of the Draft Housing Element and Negative Declaration.

Chairman Robertson opened the public hearing. There were no speakers on this issue and the public hearing was closed. The Commission briefly discussed with Mr. Miller the state's comments concerning the Draft, the future process for Draft consideration and final approval and the circumstances surrounding the City of Hillsborough's policy for satisfying its regional "extremely low income



housing" requirement -- Hillsborough has determined that second units which are occupied by people not paying rent fulfill this requirement. The Commission complimented Mr. Miller on his efforts, agreeing that the Draft Element appears very thorough and complete.

**Resolution 14-PL-10**

WHEREAS, the City of Piedmont has completed an update of its Housing Element; and

WHEREAS, a Housing Element Update is defined as a "project" under the California Environmental Quality Act and is thus subject to environmental review; and

WHEREAS, the updated Piedmont Housing Element proposes no significant changes to the City's land use or transportation maps; and

WHEREAS, the updated Piedmont Housing Element demonstrates that the City can accommodate its Regional Housing Needs Allocation (RHNA) without rezoning or increasing currently allowable densities; and

WHEREAS, the City completed an Initial Study of the proposed Housing Element and determined that the potential for environmental impacts would be mitigated by policies in the 2009 General Plan; and

WHEREAS, CEQA does not require a detailed evaluation of all projects that could conceivably be developed consistent with Housing Element policies but rather requires the City to conduct project-level environmental review for subsequent projects; and

WHEREAS, the City prepared a Negative Declaration for the Housing Element and delivered 15 copies of the Initial Study-Negative Declaration (IS-ND) to the State Clearinghouse and additional copies to the Alameda County Recorder on July 8, 2010; and

WHEREAS, the City provided public notice of the availability of the IS-ND for public review and posted copies of the document on its website for 30 days; and

WHEREAS, the comment period for the IS-ND has ended; and

WHEREAS, the document for which the IS-ND was prepared has been on the City's website since March 2010, with minor revisions in July 2010;

NOW THEREFORE BE IT RESOLVED, that the Planning Commission recommends adoption of the Piedmont Housing Element Negative Declaration by the City Council.

Moved by Henn, Seconded by Kellogg

Ayes: Kellogg, Robertson, Stehr, Henn

Noes: None

Absent: Levine, Thiel

**Resolution 15-PL-10**

WHEREAS, State law requires every city and county in California to adopt a Housing Element as part of its General Plan; and

WHEREAS, State law further requires that Housing Elements be updated every five to eight years to demonstrate that the jurisdiction is capable of accommodating its "fair share" of the region's housing needs and complies with the current requirements of the State Government Code; and

WHEREAS, cities and counties in the nine Bay Area were assigned new Regional Housing Needs Allocations in 2007 and required to update their Housing Elements by June 30, 2009; and

WHEREAS, the City of Piedmont was given a Regional Housing Needs Allocation of 40 units for 2007-2014, including 13 units of very low income housing, 10 units of low income housing, 11 units of moderate income housing, and 6 units of above moderate income housing; and

WHEREAS, the existing 2002 Housing Element had a horizon year of 2007 and did not include specific provisions beyond that year; and

WHEREAS, changes to the Government Code between 2002 and 2010 make certain provisions of the existing 2002 Housing Element non-compliant with State law; and

WHEREAS, the City completed an update of the other elements of its General Plan in April 2009, with the intent of updating the Housing Element in 2009-2010; and

WHEREAS, the City has completed a year-long process of collecting and analyzing housing and demographic data about Piedmont, and preparing new Housing Element text, goals, policies, programs, and maps; and

WHEREAS, the Planning Commission held five work sessions on the Housing Element in 2009 and two public hearings on the Element in 2010; and

WHEREAS, the proposed Element reflects input from those who participated; and

WHEREAS, an Administrative Draft of the proposed Element was submitted to the State Department of Housing and Community Development for review in March 2010, resulting in an official state comment letter indicating the revisions necessary for a compliance determination; and

WHEREAS, an Addendum to the Element has been prepared in response to the changes requested by the State; and

WHEREAS, this Addendum will be merged into the Draft Housing Element to produce a *revised* Draft for City Council consideration; and

WHEREAS, the City has completed state-mandated environmental review procedures for the project and has prepared a separate resolution for a Negative Declaration;

NOW THEREFORE BE IT RESOLVED, that the Planning Commission of the City of Piedmont recommends adoption of the updated Piedmont Housing Element, inclusive of the Plan Addendum and related administrative edits, by the Piedmont City Council.

Moved by Henn, Seconded by Kellogg

Ayes: Kellogg, Robertson, Stehr, Henn

Noes: None

Absent: Levine, Thiel

**ADJOURNMENT**

There being no further business, Chairman Robertson adjourned the meeting at 11:58 p.m.