

PIEDMONT PLANNING COMMISSION

Regular Meeting Minutes for Monday, January 11, 2010

A Regular Session of the Piedmont Planning Commission was held January 11, 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 December 31, 2009.

CALL TO ORDER

Chairman Kellogg called the meeting to order at 5:05 p.m. He announced that Agenda Items #5 (Design Review, 1078 Annerley Road) and #10 & #11 (Design Review/Second Unit Permit, 76 Sea View) have been withdrawn from tonight's consideration at the request of the applicants.

ROLL CALL

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

Absent: Commissioners Jonathan Levine and Clark Thiel (both excused)

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

City Council Liaison: Councilmember John Chiang

CONSENT CALENDAR

There was no consent calendar.

PUBLIC FORUM

There were no speakers for the public forum.

APPROVAL OF MINUTES

Resolution 1-PL-10

RESOLVED, that the Planning Commission approves as submitted its meeting minutes of December 14, 2009.

Moved by Stehr, Seconded by Robertson

Ayes: Kellogg, Robertson, Stehr, Henn

Noes: None

Absent: Levine, Thiel

REGULAR CALENDAR

The Commission considered the following items of regular business:

Variance, Design Review & Fence Design Review 303 Pacific Avenue

Mr. and Mrs. Jamie Barrett are requesting variance, design review and fence design review to make modifications throughout the residence to include the following: replacement of the entryway from Pacific Avenue; addition of retaining walls, fences, a gate, a barbeque and built-in sitting benches within the 20 ft. left side (north) setback along Hagar Avenue; addition of new pergolas and a covered entry porch; door modifications on the east and south facades; and various hardscape changes throughout including the addition of terraces in the left (north) side yard. The requested variances are from: (1) Section 17.10.7 to allow the new entry stairs to within 0'0" of the right (south) side property line in lieu of the required 20 ft. side yard setback on a street facing property line; and (2) Section 17.10.7 to allow the proposed pergola to extend to within 11 ft. of the left (north) side

property line in lieu of the required 20 ft. side yard setback on a street facing property line.

Written notice was provided to neighbors. **Three affirmative, one negative response forms** were received. **Correspondence** was received from: William Holland, Jan. 7; Beth Barrett, Jan. 11

Public testimony was received from:

Beth Barrett explained that the intent of the project is to improve access to the side entrance of her 1909 residence. She also stated that based on discussions with her neighbors, she wished to modify the current submittal by withdrawing the proposed south pergola component of the plan. She noted that a redesign of this element that is more acceptable to her neighbor may be submitted at a later date.

Bill Holland, Project Architect, described the proposed design elements and acknowledged that by withdrawing the proposed south pergola, weather protection for this entry point into the home has been lost. However, he noted that more time is needed to resolve neighbor concerns over view impact. He was confident that a mutually agreeable solution could be reached.

The Commission agreed that the proposed improvements were beautifully designed, architecturally compatible with the existing residence and appropriate for the unique site. However, the Commission voiced concern that there is no justification for granting a variance for the proposed north pergola, citing ample room on the property to construct this pergola outside of the setback. In addition, the Commission agreed that the proposed size, height and location of the north pergola would overwhelm the Hagar streetscape. The Commission also felt that since the design/concept of the south pergola will be most likely changed, the applicant should take advantage of the opportunity to reconsider the design of the north pergola to insure that both structures are compatible with each other to create architectural balance and consistency. The Commission agreed that all other elements of the plan, e.g. patio, barbeque, retaining walls, etc. were acceptable as proposed and variance approval for these improvements was justified given the topography of this corner property and the layout of existing structures on the lot.

Resolution 283-V-09

WHEREAS, Mr. and Mrs. Jamie Barrett are requesting permission to make modifications throughout the residence to include the following: replacement of the entryway from Pacific Avenue; addition of retaining walls, fences, a gate, a barbeque and built-in sitting benches within the 20 ft. left side (north) setback along Hagar Avenue; addition of new pergolas and a covered entry porch; door modifications on the east and south facades; and various hardscape changes throughout including the addition of terraces in the left (north) side yard located at 303 Pacific Avenue, Piedmont, California, which construction requires variance; and

WHEREAS, the applicant has modified the submitted plans to withdraw the proposed south pergola element of the plan from this application; and

WHEREAS, variances from the requirements of Chapter 17 of the Piedmont City Code are necessary in order to construct within the 20 ft. street facing setbacks along Pacific and Hagar Avenues; 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. That the project is categorically exempt under the California Environmental Quality Act, pursuant to Section 15301, Class 1(e);
2. The applicant has elected to withdraw the proposed south pergola from current application consideration and that the proposed north pergola component of the plan can be constructed without variance -- there is ample room on the property to locate the north pergola outside of the street facing setback;
3. The underlying lot and existing improvements present unusual physical circumstances, including but not limited to the topography of this steep sloping property and the layout of existing structures on the lot which affect the location of proposed access improvements. 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.
4. The variances are compatible with the immediately surrounding neighborhood and the public welfare because the proposed low-level improvements are attractively designed and consistent with the architecture of the residence and neighborhood.
5. Accomplishing the improvement without variance would cause unreasonable hardship in planning, design, or construction because the proposed low-level improvements cannot access the appropriate parts of the house without variance.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the variance application of Mr. and Mrs. Barrett, with the exception of the proposed north and south pergolas, for the above variances at 303 Pacific Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City.

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

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

Resolution 283-DR-09

WHEREAS, Mr. and Mrs. Jamie Barrett are requesting permission to make modifications throughout the residence to include the following: replacement of the entryway from Pacific Avenue; addition of retaining walls, fences, a gate, a barbeque and built-in sitting benches within the 20 ft. left side (north) setback along Hagar Avenue; addition of new pergolas and a covered entry porch; door modifications on the east and south facades; and various hardscape changes throughout including the addition of terraces in the left (north) side yard located at 303 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, with the exception of the proposed south and north pergolas, that the proposal conforms with the criteria and standards of Section 17.20.9 of the Piedmont City Code:

1. The exterior design elements (including but not limited to height, bulk, area openings, breaks in the façade, line and pitch of the roof, materials, arrangements of structures on the parcel, and concealment of mechanical and electrical equipment) are aesthetically pleasing as a whole and harmonious with existing and proposed neighborhood development in that the proposed improvements comply with Design Review Guidelines II-1, II-3, IV-3(a) and V-5.
2. The design, as modified, is appropriate considering its effect on neighboring properties' existing views, privacy and access to direct and indirect light because it will have minimal impact on neighbor views and light. The project complies with Design Review Guidelines II-2, II-3(b) and V-5(a).
3. The safety of residents, pedestrians, and vehicle occupants and the free flow of vehicular traffic are not adversely affected, considering the circulation pattern, parking layout and points of ingress and egress because neither sight lines nor traffic flow are affected by the proposed construction.
4. With regard to the proposed south and north pergola components of the plan, the south pergola element has been withdrawn by the applicant. As to the north pergola, the Commission finds that this element does not comply with Design Review Guidelines, II-1, II-5(a) and (b) in that it is too massive and inconsistent with other improvements along Hagar Avenue.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review application of Mr. and Mrs. Barrett, as modified, for construction at 303 Pacific Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

1. Based on the scope and nature of the proposed landscape and development plans, a best management practice plan for construction which complies with the Alameda Countywide Clean Water Program General and Residential Conditions of Approval will need to be developed by the applicant prior to obtaining a building permit;
2. Due to the scope and nature of the application, a construction management plan shall be developed and approved by staff prior to obtaining a building permit. Said plan shall be comprehensive while specifically addressing the duration of the project, construction hours, the staging of materials, and parking of worker vehicles to ensure the free flow of traffic along Pacific and Hagar Avenues;
3. The divided light grills on the new doors shall be true or three dimensional simulated;
4. The proposed north and south pergolas are not a part of the approval -- the south pergola has been withdrawn by the applicant and no design review or variance approval has been granted to allow construction of the north pergola.

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

**Design Review
19 Greenbank**

Mr. Wes Lisker and Ms. Abby Cohn are requesting design review to construct a 156 sq. ft. main-level rear addition, with roof deck above, make window and door modifications including the addition of a new side entry on the north façade, make various changes to the interior, and add exterior lighting. This Staff Design Review application has been deferred to the Planning Commission for review and action.

Written notice was provided to neighbors. **Four affirmative, two negative response forms** were received. **Correspondence** was received from: Hugh & Vicky Smith, Jan. 4; Tom & Winifred Walters, Jan. 7

Public testimony was received from:

Bennett Christopherson, Project Architect, reviewed the various design options explored in connection with proposing the modest addition, stating that the small roof deck will be tucked behind the slope of the roof overhang.

Wes Lisker stated that the primary intent of the project is to upgrade the kitchen. He noted that the small roof deck will have a solid stucco railing and privacy screen to mitigate any privacy impacts on neighbors.

Winifred and Tom Walters voiced opposition to the proposed addition, citing concerns over loss of privacy and light and their belief that the scale and mass of the addition was too large.

Abby Cohn stated that unfortunately theirs and the Walter's kitchens face each other and it is impossible to modernize her kitchen without building on the north side of the property.

The Commission agreed that the proposed addition, with the exception of the roof deck, was attractively designed and compatible in scale and mass with the existing house. The Commission felt that there would be minimal impact on neighbor light or privacy from the lower level kitchen expansion because of the 12 ft. separation distance between the properties and the fact the addition's windows will be screened by an existing fence. However, the Commission opposed the roof deck, agreeing that it was unnecessary given the ample amount of usable outdoor living area on the lot and imposes too much negative impact on this essentially one-story neighborhood. While the Commission noted its support for the project, with the exception of the roof deck, it preferred that a redesign of the roof without the deck be submitted for Commission review and approval rather than handled at staff level.

Resolution 290-DR-09

WHEREAS, Mr. Wes Lisker and Ms. Abby Cohn are requesting permission to construct a 156 sq. ft. main-level rear addition, with roof deck above, make window and door modifications including the addition of a new side entry on the north façade, make various changes to the interior, and add exterior lighting located at 19 Greenbank Avenue, Piedmont, California, which construction requires design review; and

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

1. While the exterior design elements are aesthetically pleasing and in general harmonious with existing neighborhood development, the line and pitch of the roof and the arrangement on the parcel are problematic. The distance between the proposed upper level deck and adjacent residences is not reasonable because of its impact on the neighbor to the north. The project does not comply with Design Review Guidelines II-1, II-2, II-3, II-3(a), (b) & (c) and II-6.
2. The proposed upper level addition/expansion has not been designed in a way that reasonably minimizes view and light impacts on neighboring properties (as defined in Section 17.2.70). The proposed

roof deck is inappropriate in its neighborhood location. Since removing the deck will necessitate a new roof design, it would be more appropriate that this redesign be submitted for Commission review and approval. The project fails to comply with Design Review Guideline II-6(b) in that the proposed roof deck fails to respect the overall character and privacy of contiguous parcels.

3. The size and height of the addition is not commensurate with the size of the lot nor in keeping with the existing neighborhood development because of the addition of the roof deck. The project does not comply with previously referenced 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.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission denies, without prejudice, the design review application of Mr. Lisker and Ms. Cohn for construction at 19 Greenbank Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City.

Moved by Stehr, Seconded by Henn

Ayes: Kellogg, Robertson, Stehr, Henn

Noes: None

Absent: Levine, Thiel

**Variance and
Design Review
570 Crofton Avenue**

Mr. and Mrs. Dan Salomon are requesting variance and design review to make various improvements, including: convert an existing carport into a new conforming, 2-car garage; construct a 82 sq. ft. deck and stairs at the rear; make window and door modifications; construct a new trellis; make front porch modifications; add a new bay window; and make other hardscape improvements. The requested variance is from Section 17.10.7 to allow the new garage to extend to within 7 inches of the right side property line in lieu of the code required minimum of a 4 foot side yard setback.

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

Public testimony was received from:

Dan Salomon stated that because it is necessary to rebuild his foundation, he is taking advantage of the opportunity to renovate his home. He noted that the proposed improvements utilize the existing footprint of the home. The Commission agreed that variance approval was justified since it is a pre-existing condition and that the design of the improvements are charming, compatible with the neighborhood and do not change the existing mass and scale of the residence. However, the Commission requested that the Building Official insure that vehicle ingress/egress along the driveway is not impeded by the proposed north side overhang.

Resolution 306-V-09

WHEREAS, Mr. and Mrs. Dan Salomon are requesting permission to make various improvements, including: convert an existing carport

into a new conforming, 2-car garage; construct a 82 sq. ft. deck and stairs at the rear; make window and door modifications; construct a new trellis; make front porch modifications; add a new bay window; and make other hardscape improvements located at 570 Crofton 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 right side yard setback; and

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

1. That 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 carport which will be converted into a garage is already existing within the setback and this is the most logical location for a parking structure on the lot. Because of these circumstances, strictly applying the terms of this chapter would keep the property from being used in the same manner as other properties in the zone which conform to the zoning requirements.
2. The variance is compatible with the immediately surrounding neighborhood and the public welfare because other garages in the neighborhood are similarly situated and potential alternative location sites would impose negative impacts on the applicant and/or adjacent neighbors.
3. Accomplishing the improvement without variance would cause unreasonable hardship in planning, design, or construction because the driveway and carport are existing in this location.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the variance application of Mr. and Mrs. Salomon for the above variance at 570 Crofton Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City.

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

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

Resolution 306-DR-09

WHEREAS, Mr. and Mrs. Dan Salomon are requesting permission to make various improvements, including: convert an existing carport into a new conforming, 2-car garage; construct a 82 sq. ft. deck and stairs at the rear; make window and door modifications; construct a new trellis; make front porch modifications; add a new bay window; and make other hardscape improvements located at 570 Crofton Avenue, Piedmont, California, which construction requires design review; and

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

1. The exterior design elements (including but not limited to height, bulk, area openings, breaks in the façade, line and pitch of the roof, materials, arrangements of structures on the parcel, and concealment of mechanical and electrical equipment) are aesthetically pleasing as a whole and harmonious with existing and proposed neighborhood development in that the project complies with Design Review Guidelines II-1, II-2, II-3, II-3(a), (b) & (d), II-4, III-1, III-1(a), III-2, III-3, III-5, III-5(a), III-7 and III-7(a). The proposed expansion is contained largely within the existing building envelope.
2. The design is appropriate, considering its effect on neighboring properties' existing views, privacy and access to direct and indirect light because new windows are at a low level and will be screened by an existing fence. The proposed deck faces the rear yard. The project complies with the above referenced Design Review Guidelines as well as Guidelines II-7 and III-2(a).
3. The safety of residents, pedestrians, and vehicle occupants and the free flow of vehicular traffic are not adversely affected and in fact will be improved by the conversion of an existing carport into a conforming, 2-car garage.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review application of Mr. and Mrs. Salomon for construction at 570 Crofton 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 Crofton Avenue;

2. Compliance with Chapter 9 Article III of the Municipal Code, which governs the recycling of construction and demolition debris, will be required on all phases of this project. As a Covered project, this project is eligible to participate in the Incentive Program in which the City will provide one-half the cost of debris boxes provided by the City's franchised waste hauler and used exclusively for the purpose of removing recyclable construction and demolition debris;
3. The proposed windows and doors shall be painted to match the remaining window and doors throughout the residence;
4. The Building Official shall verify that there is at least 7 ft. vertical clearance from the base of the second floor bay window pop-out at the driveway to insure vehicle ingress/egress capability along the driveway;
5. All new exterior light fixtures shall be downward directed with opaque shields, 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 Robertson, Seconded by Stehr

Ayes: Kellogg, Robertson, Stehr, Henn

Noes: None

Absent: Levine, Thiel

The Commission recessed for dinner at 6:40 p.m. and reconvened at 7:10 p.m.

**Fence Design Review
205 Ramona Avenue**

Mr. and Mrs. Eric Haas are requesting fence design review to retroactively approve a fence and gate at the front of the property. The fence is a steel picket style and has 5" x 5" posts with steel caps, measures 4'9" to the top rail, 5'8" to the top of the posts, 6'5" to the top of the gate and a combined 7'8" from the bottom of the existing stone retaining wall to the top of the fence post.

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

Public testimony was received from:

Grier Graff, Project Architect, apologized on behalf of the applicants for the failure to obtain approvals prior to the installation of the new fence but stressed that the new fence is a bit lower and much more open than the previous solid fence. He added that the fence height is desired in order to safely contain the applicant's dog but the fence's open design

is welcoming and will allow views into the front yard. Landscaping will be planted between the fence and retaining wall to further soften the fence.

The Commission was split in its support for application approval. Those in support agreed that the design of the fence was attractive and architecturally compatible with the residence, its height was appropriate given the scale and perspective of the home's high elevation above street grade, was an improvement in design and quality over the previous fence and was acceptable given that the Design Review Guidelines allow flexibility in terms of front yard fence height -- the Guidelines do not require absolute or mandatory adherence to the 4 ft. height limitation. Those in opposition felt that it was a matter of fairness to require that the new fence and gate comply with the Guidelines' 4 ft. front yard height restriction, noting that this restriction has been consistently imposed by the Commission on most applicants. They felt that the 5'8" fence height atop a stone retaining wall created too high of a front yard barrier. They noted that the existing fence could be relatively easily reduced in height if the top bar was removed, the pillars lowered and only the pickets be allowed to slightly exceed 4 ft. in height. It was noted that a split vote would deem the application approved.

Resolution 313-DR-09

WHEREAS, Mr. and Mrs. Eric Haas are requesting retroactive approval for the construction of a fence and gate at the front of the property located at 205 Ramona 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 that the proposal conforms with the criteria and standards of Section 17.20.9 of the Piedmont City Code:

1. The design of the fence is aesthetically pleasing as a whole and harmonious with existing and proposed neighborhood development in that it reflects an open style, is constructed of sturdy materials and is architecturally compatible with the existing residence. The proposal complies with Design Review Guidelines V-1, V-2, V-3 and V-5.
2. The design is appropriate, considering its effect on neighboring properties' existing views, privacy and access to direct and indirect light because there is no impact on neighboring property. The project complies with Design Review Guidelines V-5, V-5(a) & (b).
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 the fence does not obstruct sight lines, improves applicant security, protects pedestrian safety by securely enclosing the applicant's dog and does not impede emergency access. The project complies with Design Review Guidelines V-8 and V-11.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review application of Mr. and Mrs. Haas for construction at 205 Ramona 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 Stehr, Seconded by Henn

Ayes: Stehr, Henn

Noes: Kellogg, Robertson

Absent: Levine, Thiel

SPLIT VOTE -- APPLICATION APPROVED

**Fence Design Review
109 Bonita Avenue**

Mr. and Mrs. Howard Backer are requesting fence design review to replace the existing front yard fence and add a new gate with arched trellis atop.

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

Public testimony was received from:

Howard Backer stated that his current fence is failing and he intends to replace this fence in kind -- the only change is to the design of the gate. The redesigned gate will mirror the arch over the front door of his house.

The Commission, with the exception of Chairman Kellogg supported application approval. Chairman Kellogg preferred that the proposed 5 ft. gate height be reduced to 4 ft. to be in closer compliance with the City's Design Review Guidelines. The Commission majority felt that a 5 ft. gate height was appropriate and acceptable in this case to give more prominence to the front entry and be more in scale with the residence.

Resolution 314-DR-09

WHEREAS, Mr. and Mrs. Howard Backer are requesting permission to replace the existing front yard fence and add a new gate with arched trellis atop located at 109 Bonita 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 that the proposal conforms with the criteria and standards of Section 17.20.9 of the Piedmont City Code:

1. The exterior design elements of the fence are aesthetically pleasing as a whole and harmonious with existing and proposed neighborhood development in that the trellis arch on the gate mimics the arched style of the front door. The proposed improvements comply with Design Review Guidelines V-1, V-2, V-3 and V-5.
2. The design is appropriate, considering its effect on neighboring properties' existing views, privacy and access to direct and indirect light because there is no change in existing conditions. The project complies with Design Review Guidelines V-5 and V-5(a) & (c).
3. The safety of residents, pedestrians, and vehicle occupants and the free flow of vehicular traffic are not adversely affected, considering the circulation pattern, parking layout and points of ingress and egress because there is no impact on circulation patterns or sight lines. The project complies with Design Review Guideline V-9.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review application of Mr. and Mrs. Backer for construction at 109 Bonita Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following condition:

- The deck towards the rear of the property on the Proposed Site Plan labeled as (N) Deck is being considered under a separate staff design review application and is not approved under the current Fence Design Review application.

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 Robertson

Ayes: Robertson, Stehr, Henn

Noes: Kellogg

Absent: Levine, Thiel

**Variance and
Design Review
10 Lorita Avenue**

Mr. Anthony Swei and Ms. Heather Chan are requesting variance and design review to make various improvements, including: construct an approximately 957 sq. ft. multi-level addition at the rear; enlarge an existing garage; demolish an enclosed porch; expand existing basement space; add five new skylights; make window and door modifications; add exterior lighting; and make other hardscape improvements. The requested variances are from: (1) Section 17.10.7 to allow the garage to

extend to the right side property line in lieu of the code required minimum of a 4 ft. side yard setback; and (2) Section 17.10.8 to allow the garage to extend to within 1'4" 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. **Six affirmative response forms** were received. **Correspondence** was received from: Claire Otten, Oct. 11;

Public testimony was received from:

Anthony Swei explained his desire as a new owner to modernize this classic home. He noted that the project has been designed to minimize impacts on adjacent neighbors and that he will be removing the existing large palm tree.

Bill Holland, Project Architect, reviewed the major components of the project, noting that all existing, non-permitted construction will be removed or corrected as part of this project. He responded to Commission questions by stating that (1) the exact material of the proposed patio has not yet been selected, but that this patio will not be poured concrete; (2) the proposed french doors on the garage are intended to improve appearance and accessibility but that this opening could be changed to a single door if so desired by the Commission; and (3) the failed portions of the existing driveway will be regraded and/or repaved as necessary.

The Commission supported application approval, agreeing that the project will significantly improve the existing rear facade of the house and the proposed improvements are seamlessly integrated into the existing residence. The Commission further agreed that because of the large separation distances and existing vegetation screens between neighboring properties, the project will have minimal impact on neighbor light and views.

Resolution 317-V-09

WHEREAS, Mr. Anthony Swei and Ms. Heather Chan are requesting permission to make various improvements, including: construct an approximately 957 sq. ft. multi-level addition at the rear; enlarge an existing garage; demolish an enclosed porch; expand existing basement space; add five new skylights; make window and door modifications; add exterior lighting; and make other hardscape improvements located at 10 Lorita 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 right (southwest) and rear (southeast) setbacks; 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. That 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 garage is located within the setbacks and cannot be expanded without 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.

2. The variances are compatible with the immediately surrounding neighborhood and the public welfare because there are other garages similarly situated in the neighborhood. There would be more negative impact on the applicant and his neighbors if the proposed garage was relocated outside of the setbacks.

3. Accomplishing the improvement without variance would cause unreasonable hardship in planning, design, or construction because the garage already exists within the setbacks and cannot be improved or expanded without variance.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the variance application of Mr. Swei and Ms. Chan for the above variances 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.

Moved by Robertson, Seconded by Stehr

Ayes: Kellogg, Robertson, Stehr, Henn

Noes: None

Absent: Levine, Thiel

Resolution 317-DR-09

WHEREAS, Mr. Anthony Swei and Ms. Heather Chan are requesting permission to make various improvements, including: construct an approximately 957 sq. ft. multi-level addition at the rear; enlarge an existing garage; demolish an enclosed porch; expand existing basement space; add five new skylights; make window and door modifications; add exterior lighting; and make other hardscape improvements 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 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 designed to reduce losses of ambient and reflected light. The project complies with Design Review Guidelines II-1, II-2, II-3, II-3(b) & (c), II-4, II-6, II-6(a) & (b) and II-7.

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

3. The size and height of the addition is commensurate with the size of the lot (excluding the portions of the lot that cannot reasonably be built on), and is in keeping with the existing neighborhood development pattern. The proposed addition will not overpower neighboring properties, is not visible from the street and complies with the previously stated 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. 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. As a part of the project, the driveway will be made usable for vehicle traffic and the use of the garage for parking. The project complies with Design Review Guidelines III-3, III-5, III-6 and III-7.

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, 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 Lorita Avenue;

2. The applicant shall submit a landscaping plan for staff approval prior to the issuance of a building permit. After final building permit inspection, the applicant shall be allowed to make modifications to any aspect of the landscape plan that does not require design review under Chapter 17 of the City Code,
3. Compliance with Chapter 9 Article III of the Municipal Code, which governs the recycling of construction and demolition debris, will be required on all phases of this project. As a Covered project, this project is eligible to participate in the Incentive Program in which the City will provide one-half the cost of debris boxes provided by the City's franchised waste hauler and used exclusively for the purpose of removing recyclable construction and demolition debris;
4. The broken areas of the driveway that are not included in driveway regrading and repaving shall be addressed so as to allow safe and convenient vehicle access to the garage.
5. Because the proposed paving material for the patio is not articulated in the submitted plans, said paving shall be attractive material and not poured concrete and shall be subject to staff review and approval;
6. The existing palm tree shall be removed so that the proposed retaining walls can be constructed.

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

Moved by Robertson, Seconded by Stehr

Ayes: Kellogg, Robertson, Stehr, Henn

Noes: None

Absent: Levine, Thiel

**Design Review and
Fence Design Review
71 Dudley Avenue**

Mr. Roger Ha and Ms. Jennifer Lee are requesting design review and fence design review to remodel and enlarge the existing 4,216 sq. ft. two-story house by adding 1,768 sq. ft. of habitable space through excavation, lifting and additions. The resulting 2-story house is proposed to have a new entry, foyer, family room, kitchen, dining room, living room, and 2-car garage on the lower level; and 5 bedrooms, recreation room and 4 full bathrooms on the upper level. Proposed site improvements include: a new entry path and steps with trellis, new

hardscape and landscape improvements and exterior lighting. An alternate site plan proposes a new sidewalk with a bulb-out into the street, front retaining walls and demolition of the front fence. The application also proposes to enlarge the interior of the existing garage, construct a new well deck cover, and retroactive approval for the fence surrounding the property. On September 10, 2007, the Commission approved a New House application for this parcel but said approval expired on March 10, 2009.

Written notice was provided to neighbors. **Three affirmative, one negative response forms** were received. **Correspondence** was received from: Susan Lee & James Ho, Jan. 7; Katy & Chris Ford, Jan. 6.

Public testimony was received from:

Grier Graff, Project Architect, stated that the applicants have decided not to proceed with subdividing this large property and instead plan to extensively remodel the existing house. He described the proposed design features of the project, noting that the "maid's quarters" indicated on the plan will be addressed through a separate application. He also discussed at length the proposed staff condition that either a sidewalk be constructed on the property or the applicants contribute \$20,000 toward a City sidewalk construction fund. He questioned the fairness of such a condition, stressing that there is no current policy or ordinance requiring such a sidewalk fee and the suggested \$20,000 amount is far in excess of what would be required to construct a sidewalk on the property. The Commission discussed this sidewalk issue at length, with direction given to staff on this matter later in the meeting. As to this current application, the Commission was unanimous that a sidewalk should not be constructed in front of the applicants' property because (1) there are no other sidewalks on this side of Dudley; (2) for safety and convenience reasons, pedestrian traffic should be directed to the other side of the street; (3) sidewalk installation would result in the loss of mature trees to the detriment of the property and neighborhood; and (4) a sidewalk along the applicants' property could adversely impact the usability of the driveway and garage at 716 Blair. In addition, the Commission agreed that the curb and gutter in front of the applicants' property is in good condition and does not need replacing. The Commission was opposed to requiring the proposed sidewalk construction/fee condition for the current application, stressing that it is premature at this time since no City criteria, policy or ordinance is currently in effect to implement the pedestrian infrastructure measures contained in the City's General Plan Update and Climate Action Plan. While the Commission did not oppose a sidewalk requirement or contribution fee in concept for large scale projects, it preferred that a specific policy and implementing ordinance be adopted by the City Council prior to any conditions of approval being imposed on applications.

Susan Lee referenced her letter in opposition to the project, reiterating her concerns over a loss of privacy. The Commission responded that only one window faces Ms. Lee's property and at the closest point, there is a separation distance of approximately 45 ft.

As to project design, the Commission supported application approval, agreeing that the design of the proposed remodel is elegant and appropriate for the site and the proposed improvements will not adversely impact neighboring properties given the large separation distances between homes and the heavily wooded nature of the property. As to the fencing components referenced in the application, the Commission agreed that the 6 ft. solid fence fronting the property is a pre-existing condition which has been in place for decades; thus fence design review approval is not a component of the current design nor is it required or necessary.

Resolution 318-DR-09

WHEREAS, Mr. Roger Ha and Ms. Jennifer Lee are requesting permission to remodel and enlarge the existing 4,216 sq. ft. two-story house by adding 1,768 sq. ft. of habitable space through excavation, lifting and additions. The resulting 2-story house is proposed to have a new entry, foyer, family room, kitchen, dining room, living room, and 2-car garage on the lower level; and 5 bedrooms, recreation room and 4 full bathrooms on the upper level. Proposed site improvements include: a new entry path and steps with trellis, new hardscape and landscape improvements and exterior lighting. An alternate site plan proposes a new sidewalk with a bulb-out into the street, front retaining walls and demolition of the front fence. The application also proposes to enlarge the interior of the existing garage, construct a new well deck cover, and retroactive approval for the fence surrounding the property located at 71 Dudley 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 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 are well away from neighboring, contiguous properties and the proposed lower level front terrace is essentially on grade and the upper level deck is tucked into the form of the residence and is barely visible. The proposed project complies with Design Review Guidelines II-1, II-2, II-3, II-3(a) through (d), II-4, II-5, IV-1, IV-1(a) & (b), IV-2, IV-2(a), IV-3, IV-3(a) and IV-6. Based upon testimony, the current fencing is an exact replacement/repair of pre-existing fences and as such is not subject to design review and has no impact on the current design and application.

2. The proposed upper level addition/expansion has been designed in a way that reasonably minimizes view and light impacts on neighboring

properties (as defined in Section 17.2.70), including consideration of the location of the new construction, lowering the height of the roof and room over the proposed new garage to mitigate impact on the neighbor at 716 Blair. Proposed improvements are approximately 61 ft. away from the left property line, 40 ft. from the rear property line and 38 ft. from the right property line. This substantial separation distance mitigates light, view and privacy impacts on adjacent residences. The project complies with Design Review Guidelines II-6, II-6(a) through (c), II-7 and II-7(a).

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 project complies with the above referenced 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. 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. A 2-car conforming garage is proposed and there is no change to the existing ingress/egress to the residence. A change to the garage to the maid's quarters is a part of this current application but the maid quarters' itself is not part of this application or approval. In addition, the Commission has determined that a sidewalk in front of the property is not necessary because it would not connect to any other sidewalks on neighboring lots and would not improve pedestrian safety because it would not be along a safe pedestrian route.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review application of Mr. Ha and Ms. Lee for construction at 71 Dudley 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 Chief 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. 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 \$15,000 as established by the Director of Public Works, to cover the cost of any damage to City property or facilities in any way caused by Applicant, Applicant's contractors or subcontractors, or any of their agents, employees or assigns, or others working for or on behalf of Applicant on this Project, and related in any way to the Project. The form and terms of such City Facilities Security shall be determined by the Director of Public Works after consultation with the Applicant.

a. In addition to the City Facilities Security, Applicant shall execute a Personal Guaranty for the protection of the City in the form and on terms determined by the Director of Public Works and prepared by the City Attorney, which Personal Guaranty shall cover any damages to City property or facilities which are not fully covered by the City Facilities Security.

b. Proceeds from the City Facilities Security and the Personal Guaranty shall be payable to the City upon demand, conditioned solely on the Director of Public Works' certification on information and belief that all or any specified part of such proceeds are due and owing to the City. The City shall not be required to prove or otherwise establish in

any way that such proceeds are required to compensate it for damages to City property or facilities, that Applicant is directly or indirectly responsible therefore, or any other prerequisites to the City's entitlement to collect such proceeds from the provided security.

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

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

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

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

6. **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.

7. **City Attorney Cost Recovery.** Due to the substantial additional commitment of City Attorney's time required to accommodate the scope and nature of the Project proposed by the Applicant, the Applicant shall, prior to commencement of construction, make a cash deposit with the City in the amount of \$5,000 to be used to offset time and expenses of the City Attorney relating to the Project. If such cash deposit has been reduced to \$2,500.00 or less at any time, the Director of Public Works may require the Applicant to deposit additional funds to cover any further estimated additional City Attorney time and expenses. Any unused amounts shall be refunded to the Applicant within 90 days after the Project has an approved Final Inspection by the Chief Building Official.

8. **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.

9. **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.

10. **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.

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. **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.

13. **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.

14. 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.

15. 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.

16. Final Landscape Plan. The Applicant shall provide a Final Landscape Plan that shows trees proposed for retention as well as in-lieu trees required by a Certified Tree Preservation Plan. The Plan shall also include a landscaping buffer along the north edge of the driveway adjacent to 716 Blair. 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. Arborist's Report. Prior to the issuance of a building permit, the Applicant shall submit an Arborist's Report that includes tree preservation measures to preserve existing trees proposed to remain on-site as well as any nearby off-site trees. The tree preservation measures shall be on the appropriate sheets of the construction plans. The arborist shall be on-site during critical construction activities; initial and final grading to ensure the protection of the existing trees. The arborist shall document in writing and with photographs the tree protection measures during these critical construction phases. If some trees have been compromised, mitigation measures must be specified in writing, and implementation certified by the Project Arborist. Trees proposed for removal shall have an in-lieu replacement tree planted elsewhere on the property, which shall be shown on the final landscape plan. At the conclusion of the project, prior to Final Inspection, the Arborist shall file a report to the City of Piedmont certifying that all tree preservation measures as recommended have been implemented to his/her satisfaction and that all retained trees have not been compromised by the construction.

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

Sidewalk Compliance During Commission discussion of 71 Dudley related to staff's recommendation of a sidewalk construction condition in response to Policy 101 and Action 10.B of the 2008 General Plan Update and Measure TL-1.1 of the Draft Piedmont Climate Action Plan, the Commission requested staff (Public Works Director, City Planner, Assistant Planner, City Attorney and Building Official) to expedite preparation of a proposed ordinance for implementing said policies and measures. Items suggested to be addressed in said ordinance included: (1) requiring new home construction and major renovation projects to comply with said ordinance; (2) prioritize the City's list of existing "sidewalk gaps;" (3) development of criteria and methods for insuring an equitable cost calculation for sidewalk construction, e.g. if and when curbs & gutters should be included in such fees, excluding curb cuts/entry steps and driveways from sidewalk square footage measurements, requiring licensed engineers to verify sidewalk construction estimates/bids; etc.; and (4) procedures for implementing/collecting the sidewalk fee at the Building Permit level.

ADJOURNMENT

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