

PIEDMONT PLANNING COMMISSION

Regular Meeting Minutes for Monday, October 11, 2010

A Regular Session of the Piedmont Planning Commission was held October 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 October 1, 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 (both excused)

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

City Council Liaison: Councilmember Jeff Wieler

CONSENT CALENDAR

The following Resolution was approved under one vote by the Commission:

Fence Design Review 121 Sea View Avenue

Resolution 262-DR-10

WHEREAS, [REDACTED] are requesting permission to make modifications to a previously approved (August 9, 2010) fence design. The current application proposes a fence parallel to Sea View Avenue that ranges in height from 4 ft. 8 in. to 5 ft. and a matching fence along the northern (right) side property line ranging in height from 5 ft. to 5 ft. 10 in. next to the existing retaining wall which varies in height (for a total maximum height of 8 ft. 10 in. counting both the retaining wall and fence). Both fences are proposed to be vertical redwood boards with a lattice top 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 are aesthetically pleasing as a whole and harmonious with existing and proposed neighborhood development in that the arrangement of the structures on the parcel is appropriate, it is compatible with the architectural style of the house, is not readily visible from the street, improves the privacy between the two adjacent properties and the slight increase in height from that previously approved is appropriate since the fence encloses the only usable outdoor space on the property. The project complies with Design Review Guidelines V-2, V-5 and V-5(a) & (b).

2. The design is appropriate, considering its effect on neighboring properties' existing views, privacy and access to direct and indirect light because the property is a corner lot with the only usable outdoor area adjacent to the next door neighbor on the inside of the corner lot. The additional fence height in the front 20 foot setback provides a logical transition from the front to the side fence to protect neighbor privacy given the topography and change in elevation. The project complies with Design Review Guideline V-6.

3. The safety of residents, pedestrians, and vehicle occupants and the free flow of vehicular traffic are not adversely affected, considering the circulation pattern, parking layout and points of ingress and egress because emergency access to the rear of the property as well as the neighbors' rear yard is not obstructed. The fence does not obstruct line of sight distances from the neighbor's driveway. The project complies with Design Review Guidelines V-7, V-8, V-9 and V-11.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review application of [REDACTED] 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.

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 16-PL-10

RESOLVED, that the Planning Commission approves as submitted its meeting minutes of August 9, 2010.

Moved by Stehr, Seconded by Kellogg

Ayes: Kellogg, Robertson, Stehr

Noes: None

Abstain: Henn

Absent: Levine, Thiel

Resolution 17-PL-10

RESOLVED, that the Planning Commission approves as submitted its meeting minutes of September 13, 2010.

Moved by Kellogg, Seconded by Stehr

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

REGULAR CALENDAR

Retaining Wall Design Review 1 Croydon Circle

The Commission considered the following items of regular business:

Mr. Balaram Puligandla and Ms. Linda Okahara are requesting retaining wall design review to make various front yard improvements, including to demolish an existing brick retaining wall and construct a new stucco-sided retaining wall; replace existing front entry stairs; install new wrought-iron handrails; and make other hardscape and landscape modifications.

Written notice was provided to neighbors. **One affirmative, two negative response forms** were received. **Correspondence** was received from: Bryon & Caryl James

Public testimony was received from:

Linda Okahara and Project Designer Roxy Wolosenko described the proposed improvements, noting the intent to reduce the visual mass of the retaining walls by using stucco rather than brick. Ms. Wolosenko also responded to Commission questions by agreeing to plant a small specimen tree to replace the large tree to be removed by the driveway. She noted that root encroachment from the large tree contributed to the failure of the existing brick retaining wall and driveway. She also agreed that the retaining wall along the left side of the driveway would have a similar curved radius as that on the right side, concurring that this modification would improve driveway ingress/egress as well as create a more symmetrical appearance.

Jerry Herrick requested that the new retaining walls be brick rather than stucco to maintain and continue the neighborhood's brick wall character.

The Commission supported application approval, agreeing that the project respects the existing neighborhood tradition even if stucco is substituted for brick on the retaining walls. The Commission agreed that the stepped down design, lower height and exterior finish of the walls minimizes mass and visual intrusiveness, is compatible within the neighborhood's context and tradition, is well detailed and attractive and appropriate for a transition lot bordering two neighborhoods -- St. James and Croydon Circle.

Resolution 260-DR-10

WHEREAS, Mr. Balaram Puligandla and Ms. Linda Okahara are requesting permission to make various front yard improvements, including to demolish an existing brick retaining wall and construct a new stucco-sided retaining wall; replace existing front entry stairs; install new wrought-iron handrails; and make other hardscape and landscape modifications located at 1 Croydon 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, including but not limited to height, bulk, area openings, materials and arrangements of structures on the parcel are aesthetically pleasing as a whole and harmonious with existing and proposed neighborhood development in that the walls, constructed with a stucco base and brick cap, comply with Design Review Guidelines II-3(c) & (d), IV-1, IV-1(a), IV-2, VI-2(a), IV-3, IV-3(a) and IV-4.
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.
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 lowering of the front yard walls, by their stepped down design, will improve sight lines exiting the driveway. The project complies with Design Review Guidelines IV-2 and IV-2(a).

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review application of Mr. Puligandla and Ms. Okahara for construction at 1 Croydon 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 on September 30, 2010, after neighbors were notified of the project and the plans were available for public review;
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 Croydon Circle;
3. Prior to the issuance of a building permit, the applicants shall apply and pay for an encroachment permit for the construction of the new retaining wall located in the City's street right-of-way.
4. The retaining wall along the left side of the driveway shall have a radius matching that on the right side.

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: Kellogg, Robertson, Stehr, Henn

Noes: None

Absent: Levine, Thiel

**Variance and
Design Review
127 Hagar Avenue**

Mr. David Rucker, on behalf of Onsite Development, LLC., is requesting variance and design review to substantially renovate and stylistically alter the residence. The alterations include interior floor plan modifications; new exterior materials; modifications to the roofline; changes to the windows and doors; the restoration of a 1-car garage; new upper and lower level decks; new exterior lighting; and site and landscape changes. The requested variances are from: (1) Section 17.10.6 to allow the wood fascia (eyebrow) to extend to within 10' 4" of the front property line in lieu of the code required minimum of a 20 ft. front yard setback; and (2) Section 17.10.7 to allow the wood fascia (eyebrow) to extend to 2' 10" of the left side property line and 3' 10" at the western corner of the house in lieu of the code required minimum of a 4 ft. side yard setback.

Written notice was provided to neighbors. **Five affirmative, three negative response forms** were received. **Correspondence** was received from: David & Elizabeth Kuhn; David Rucker; Henry Chinn

Public testimony was received from:

David Rucker stated that Onsite Development purchased the property as an investment and the proposed design reflects extensive discussions with neighboring residents to minimize view and privacy impacts associated with the extensive renovation of the existing, poorly designed residence.

Steven Stept, Project Architect, stated that the intent of the design is to create a home that is in scale and proportion with the lot and neighborhood while taking advantage of the property's significant views of San Francisco Bay. He felt that the modern, contemporary design of the home is compatible with the neighborhood's mix of architectural styles, the warm-tone color of the exterior finishes and roof material minimizes visual impact and the design of the structure improves street views while minimizing view impacts on 133 Hagar (Chinn property). He stated that roof vents will be minimal in number, painted a dark color and hidden by a parapet wall, the clear glass deck railing will enable neighbors to see through the deck without creating any glare or shine and the skylight is intended to provide natural light into the stairwell without creating any night light spill.

Kathy Chinn, speaking for her parents, submitted photographs of the project's story poles in support of her contention that the proposed project will significantly impact her parents' views, privacy and light.

She voiced support for the front elevation design but felt that the rear improvements created too much adverse impact on her parents' home.

JinTang Jhang also felt that the front elevation of the renovation was attractive and an improvement over existing conditions. However, he voiced concern that the height of the west wall was too imposing, its large expanse of glass was out of character with the neighborhood, the side setback variance was unjustified given the width of the lot and the negative impacts from locating structures so close to the adjacent neighbor. He also felt that the rear deck will intrude upon the privacy of rear neighbors.

Bruce Gilmore referenced his correspondence in noting that the applicants have been cooperative and responsive in accommodating neighbor requests. However, he urged the Commission to insure that the proposed pebble rock roof material will have a muted color, the roof will not be used for recreational purposes and the height of proposed landscaping will not exceed 20 ft. at maturity so as to protect and preserve existing neighbor views.

David and Elizabeth Kuhn agreed that many of the neighbors initial concerns have been satisfactorily addressed by the applicants. However, they too wanted assurances that roof vents will be painted a dark color, the roof surface will be non-reflective and dark grey in color, the roof will not be used as an outdoor patio, the skylights will be of non-reflective material and not create any night spill light impacts and landscaping will not exceed 20 ft. in height at maturity.

The Commission voiced regret that it was not invited to view the proposed project from inside the residence at 133 Hagar so as to better ascertain potential impacts. However, the Commission was convinced that the proposed project, as currently designed, will impose significant view loss on the Chinn property that can be avoided/minimized with a redesign. In particular, it was suggested that the dining room wall be pulled back approximately 5 ft, the deck be moved to the same plane as the kitchen/master bedroom, consideration be given to eliminating or reducing the deck overhang, the overall size and massing of the home's south facing wall be re-evaluated, more information be provided regarding the color and heat factors related to the proposed roofing material, a different tree variety than ginkgo be proposed and consideration be given to reducing or eliminating the stairwell skylight so as to avoid the potential for night light spill. Commissioner Henn supported retaining the stairwell skylight for energy savings and safety reasons and supported eliminating the deck roof overhang to mitigate the impact on the Chinn property. He preferred that the project be approved, with conditions. The Commission majority preferred that a redesign be resubmitted for Commission review.

However, the Commission was unanimous that the contemporary architectural style of the residence was attractive and appropriate for the neighborhood, the front elevation was compatible within the neighborhood context, the addition of one off-street parking space on a property with currently no off-street parking was a benefit to the neighborhood and community at large and the requested variances were appropriate given pre-existing conditions on the property as well as the aesthetic benefits of maintaining architectural integrity.

The Commission acknowledged that since the design was not approvable as currently proposed, it was not possible to approve the variances associated with this design. However, the Commission agreed that variances for front and side setback encroachment on this property are appropriate. Therefore, in order not to penalize the applicants by requiring a second variance application fee, the Commission agreed to waive the variance fee for a revised submittal. However, the Commission agreed that a fee should be assessed for a revised design review application in light of staff work involved in re-evaluating and re-noticing a revised design.

The Commission requested the Chinn's to consider inviting Commissioners to view the proposed project from inside their home.

Resolution 263-V-10

WHEREAS, Mr. David Rucker, on behalf of Onsite Development LLC, is requesting permission to substantially renovate and stylistically alter the residence. The alterations include interior floor plan modifications; new exterior materials; modifications to the roofline; changes to the windows and doors; the restoration of a 1-car garage; new upper and lower level decks; new exterior lighting; and site and landscape changes located at 127 Hagar 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 front and left (south) side yard 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:

- There is no approved design associated with this variance application, hence the requested variances cannot be approved at this time.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission denies, without prejudice, the variance application of Mr. Rucker for the above variances at 127 Hagar Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City.

RESOLVED FURTHER, that although the requested variances are not approvable at this time, the Commission finds that front and side yard variances on this property are appropriate given pre-existing conditions on the property. Therefore, the Commission waives the fee for a resubmittal of a variance application for this property made in connection with a revised design.

Moved by Stehr, Seconded by Kellogg

Ayes: Kellogg, Robertson, Stehr, Henn

Noes: None

Absent: Levine, Thiel

Resolution 263-DR-10

WHEREAS, Mr. David Rucker, on behalf of Onsite Development LLC, is requesting permission to substantially renovate and stylistically alter the residence. The alterations include interior floor plan modifications; new exterior materials; modifications to the roofline; changes to the windows and doors; the restoration of a 1-car garage; new upper and lower level decks; new exterior lighting; and site and landscape changes located at 127 Hagar Avenue, Piedmont, California, which construction requires design review; and

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

1. The exterior design elements are aesthetically pleasing as a whole and harmonious with existing and proposed neighborhood development. However, the height and bulk of the rear facade are not in keeping with the overall neighborhood development. Upper level setbacks greater than currently proposed should be considered. The project does not comply with Design Review Guideline II-1, II-2 and II-3.
2. The proposed upper level deck expansion, the rear setback and the windows have not been designed in a way that reasonably minimizes view and light impacts on neighboring properties, especially with regard to the property at 133 Hagar Avenue, including the consideration and the location of the new construction. The project does not comply with Design Review Guidelines II-5, II-6(a) & (b), II-7, II-7(a) & (b). In particular, the exterior location of the window and skylights fail to respect the visual privacy of the residences located across the street.
3. The size and height of the addition is not commensurate with the size of the lot. The project fails to comply with Design Review Guidelines I-2, I-2(d), I-5, I-5(b) and I-7. More excavation under the existing house could be done to minimize the exterior bulk of the rear facade.
4. The safety of residents, pedestrians, and vehicle occupants and the free flow of vehicular traffic are not adversely affected and would be improved with the addition of a garage. While the proposed plan does not comply with the parking requirements of Section 17.16 of the City Code, the project is eligible for a special exemption pursuant to Section 17.20.6 because the extent of the existing nonconformity is being reduced.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission denies, without prejudice, the design review application of Mr. Rucker for construction at 127 Hagar Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City.

Moved by Stehr, Seconded by Kellogg

Ayes: Kellogg, Robertson, Stehr

Noes: Henn

Absent: Levine, Thiel

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

**Design Review
33 Tyson Circle**

Mr. and Mrs. Jacky Li are requesting design review to construct a 950 sq. ft. pool deck addition with an outdoor kitchen, fireplace and trellis; construct a 150 sq. ft. half-bath and storage structure at the tennis court; relocate and add solar panel structures; install new exterior lighting; and make various site improvements through excavation and infill at the southeast quadrant of the property including various new retaining walls, a lawn and court area and new paths and steps. A similar application was partially approved/partially denied by the Commission on August 9, 2010.

Written notice was provided to neighbors. **No response forms** were received.

Public testimony was received from:

Stefan Menzi, Project Architect, described the substantial changes in design made in response to the August meeting, including the submission of a complete landscaping plan.

Sarah Gronquist, Landscape Architect, discussed the proposed landscaping, stating her willingness in response to Commission requests to include more large shade trees in the plan, especially in the area bordering the lawn near the top of the retaining wall.

Sunit Gala felt that while the redesign was an improvement over the originally submitted plan, he voiced concern over hillside stability, light spill impacts, loss of canyon view and acoustic and privacy intrusions from the tennis court and lawn area. He requested the planting of larger size trees so as to better screen the tennis court and lawn area from his view.

The Commission agreed that the redesign was responsive to Commission requests and will create a beautiful property that will enhance the value of the applicants' and neighboring property. However, the Commission had reservations over the landscaping plan, stressing the need for a taller tree screen near the lawn area. It was suggested that a grouping of 3 to 5 trees, evergreen or a combination of evergreen and deciduous, be planted near the top of the retaining wall adjacent to the lawn area to provide a canopy screening of lawn activities for downhill neighbors. The Commission clarified that the intent of the revised landscaping is not to recreate the existing canyon appearance but to provide a greater degree of privacy screening of the lawn area for neighbors as well as add a visual focal point. It was also suggested that the adequacy of the trees and shrubs proposed to screen the bottom level of the retaining wall also be re-examined. The Commission requested that the City's Parks & Project Manager, who is a landscape architect, be requested to review and approve the revised landscaping plan as a condition of project approval. The Commission also requested the Project Architect to insure that the proposed light bollards are directed away from neighboring properties. The Commission further agreed that the extensive conditions of project approval will address and mitigate Mr. Gala's concerns over site stability.

Resolution 264-DR-10

WHEREAS, Mr. and Mrs. Jacky Li are requesting permission to construct a 950 sq. ft. pool deck addition with an outdoor kitchen, fireplace and trellis; construct a 150 sq. ft. half-bath and storage structure at the tennis court; relocate and add solar panel structures; install new exterior lighting; and make various site improvements through excavation and infill at the southeast quadrant of the property including various new retaining walls, a lawn and court area and new paths and steps 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. The proposed improvements transform an unmaintained and undeveloped portion of the property into a specific and coherent landscape scheme well integrated into the rest of the property. The proposed retaining walls comply with Design Review Guidelines IV-1, IV-2 and IV-3. The proposed accessory structure complies with Design Review Guidelines II-2, II-3(a) & (b).
2. The proposed upper level accessory structure complies with Design Review Guidelines II-2, II-3(a) & (b).
3. The size and height of the small addition and deck is commensurate with the size of the enormous lot.
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 the existing circulation patterns, with the exception of construction work which will be covered by the construction management plan condition of project approval.

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 construction 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 on September 22, 2010 with additional information submitted on September 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. **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; 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.

20. **Encroachment Permit.** Prior to the issuance of a building permit, the applicants shall apply for an encroachment permit to allow for the construction within the sanitary sewer easements, including the patio terrace, new retaining walls, or any other structures.

21. **Sewer Condition and Repair.** Prior to the issuance of a building permit and any excavation and the construction of the new pool terrace and retaining walls, the applicants shall work with City staff to verify the location and depth of the sanitary sewer mains and the location of easements and any manholes and cleanouts in the east side yard and rear yard. In addition, 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 and whether any repairs to or replacement of the sewer main is required prior to the commencement of excavation and/or construction. As part of the final inspection the same sewer line(s) shall be inspected as required by the Director of Public Works, who shall also determine if sewer line(s) were damaged as a result of the construction and therefore must be repaired at the applicants' expense.

22. **Light Bollards.** The proposed light bollards at the southwest corner of the property shall face away from the property lines.

23. **Landscaping.** The landscaping plan shall be amended to include the planting of 3 to 5 large-size shade trees near the top of the retaining wall adjacent to the lawn area. The objective of this tree planting, which can include evergreen and deciduous trees, is to create a focal point and separation between the applicant's lawn area and the adjoining properties to the south and east. Said landscaping modification shall be subject to review and mutual approval by the City's on-staff landscape architect and the applicant's landscape architect.

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
335 Mountain Avenue

Mr. and Mrs. Scott Reugg are requesting design review for retroactive approval of a 30 ft. segment of 6 ft. high vertical wooden stake fencing on the northern (rear) property line (shared with 37 Bellevue Avenue). A portion of the fence is on a retaining wall near the northwest corner, creating a maximum combined height of wall and fence of 8 ft. 8 in. This staff design review application was deferred to the Commission for review and action.

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

Commissioner Stehr recused herself from discussion and action on this application and left the chambers.

Public testimony was received from:

Heather Reugg apologized for failing to realize that replacing her rear fence at the same location and height required design review, acknowledging that while the height and location remains the same, the new fence is all wood rather than the former combination of wood and chain link.

Ron Gruber supported application approval provided his fence proposal (next agenda item) is likewise approved by the Commission.

The Commission supported application approval, agreeing that the 6 ft. rear fence is not visible to the public, with the exception of the Grubers who do not oppose fence construction.

Resolution 269-DR-10

WHEREAS, Mr. and Mrs. Scott Reugg are requesting retroactive approval of a 30 ft. segment of 6 ft. high vertical wooden stake fencing on the northern (rear) property line (shared with 37 Bellevue Avenue). A portion of the fence is on a retaining wall near the northwest corner, creating a maximum combined height of wall and fence of 8 ft. 8 in. located at 335 Mountain Avenue, Piedmont, California, which construction requires design review; and

WHEREAS, after reviewing the application, plans and any and all testimony and documentation submitted in connection with such application, and after having visited subject property, the Piedmont Planning Commission finds that the 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. The project complies with Design Review Guidelines V-1, V-2 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 the rear fence is not visible to the public. There is no impact on the adjacent property. The project complies with the aforementioned Design Review Guidelines as well as Guideline V-5(a).
3. The safety of residents, pedestrians, and vehicle occupants and the free flow of vehicular traffic are not adversely affected because there is no impact on 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. Reugg for construction at 335 Mountain 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 108.4 of the California Building Code (adopted by the City of Piedmont), the applicants shall be charged double building permit fees for construction prior to the issuance of building permits.
2. The approved plans are those submitted on October 1, 2010, after notices to neighbors were mailed and the application was available for public review.

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

Moved by Henn, Seconded by Kellogg

Ayes: Kellogg, Robertson, Henn

Noes: None

Recused: Stehr

Absent: Levine, Thiel

**Design Review
37 Bellevue Avenue**

Mr. and Mrs. Ron Gruber are requesting design review to construct a 6 ft. high grapestake fence immediately behind a 4 ft. high retaining wall along a portion of the southern (left) side property line (shared with 335 Mountain Avenue), resulting in a total height of 10 ft. counting the retaining wall and fence. This staff design review application was deferred to the Commission for review and action.

Written notice was provided to neighbors. **One affirmative response form** was received. **Correspondence** was received from: Scott & Heather Ruegg

Commissioner Stehr recused herself from discussion and action on this application and left the chambers.

Public testimony was received from:

Ron and Gloria Gruber stated that a recent survey indicated that their property line extends to the Reugg's retaining wall. The purpose of moving their existing fence to the edge of the retaining wall is to provide guardrail protection for the retaining wall and eliminate the potential liability/hazard of their grandkids falling off the retaining wall. They stated their reluctance to keep the new fence in its former location and densely landscape the approximately 2 ft. separation between the retaining wall and the fence so that the vegetation serves as a guardrail. They also felt that it was the Reugg's responsibility to install a guardrail on the retaining wall.

Heather Reugg opposed a 6 ft. high grapestake fence immediately adjacent to the retaining wall, stressing that a fence/wall height of 10 ft. only 4 ft. from her home would loom over her yard and create an undesirable closed-in feeling. She preferred either a metal guardrail or vegetation screening to mitigate the Gruber's liability concerns.

The Commission discussed the issue at length, agreeing that a 6 ft. high grapestake fence immediately adjacent to the retaining wall is not desirable and contrary to the City's Design Review Guidelines. Several alternative options were discussed. These alternatives included (1) keeping the new 6 ft. fence in its former location and planting a vegetation screen in the area between the fence and retaining wall; (2) erecting a 4 ft. high grapestake fence next to the retaining wall -- believing that this height would be sufficient to protect the Gruber's privacy; or (3) installing a 4 ft. high open metal guardrail similar in style to the railing on an adjacent property line. The Commission urged the applicants and their neighbors to work out a mutually agreeable solution.

Resolution 272-DR-10

WHEREAS, Mr. and Mrs. Ron Gruber are requesting permission to construct a 6 ft. high grapestake fence immediately behind a 4 ft. high retaining wall along a portion of the southern (left) side property line (shared with 335 Mountain Avenue), resulting in a total height of 10 ft. counting the retaining wall and fence located at 37 Bellevue 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, as conditioned, conforms with the criteria and standards of Section 17.20.9 of the Piedmont City Code:

1. The fence, as conditioned, is aesthetically pleasing as a whole and harmonious with existing and proposed neighborhood development. The project involves a simple fence between two adjoining properties constructed of grapestake which is in keeping with a new fence recently installed at 335 Mountain Avenue. The project complies with Design Review Guidelines V-1, V-2, V-5, V-5(a) and V-7. The fence height, as conditioned, is an appropriate measure for life-safety.

2. The fence, as conditioned, is appropriate, considering its effect on neighboring properties' existing views, privacy and access to direct and indirect light because there is no impact on privacy and the proposed fence will provide a life-safety barrier at the property line's retaining wall. The applicants have alternatives to provide visual separation and privacy between the two properties.

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 existing circulation patterns are not affected. The proposed fence will provide a guardrail barrier at the retaining wall on the property line. The project complies with Design Review Guidelines V-10 and V-11; and

WHEREAS, the Planning Commission further finds that:

4. The fence, as proposed with a combined height of 10 feet, does not comply with Section 17.17.1(b) of the Zoning Code or Design Review Guidelines V-5, V-5(a) through (c) because such a fence height creates an unacceptable and unsatisfactory visual barrier impact on the property at 335 Mountain Avenue given that its location on the property line prevents an opportunity for landscaping this fence to mitigate its excessive height.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review application of Mr. and Mrs. Gruber for construction at 37 Bellevue 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 108.4 of the California Building Code (adopted by the City of Piedmont), the applicants shall be charged double building permit fees for construction prior to the issuance of building permits.

2. The approved plans are those submitted on October 1, 2010, after notices to neighbors were mailed and the application was available for public review.

3. In order to comply with City Zoning Code Section 17.17.1(b), a 6 ft. fence height is the maximum allowed. Under the code, the proposed fence, as submitted and measured from grade, represents a height of approximately 9 to 10 feet. Consequently, the fence, as proposed, does not comply with the Zoning Code. Therefore, the proposed fence, as conditioned, cannot exceed 48 inches in height measured from the applicants' side of the fence or the top of the retaining wall. This reduced fence height is reasonable in terms of its

appropriateness of providing life-safety protections for the applicant and its compatibility with other fences in the immediate area while minimizing neighbor light and view impacts.

4. The applicants have the option of either increasing privacy and visual separation between the neighboring property by planting a landscape barrier or pursuant to Section 17.17.2 to install a 6 ft. high fence two feet away from the adjoining property line.

5. The applicants have the further option, as an acceptable alternative, of installing a 6 feet high open metal railing similar in style to the metal railing on the neighbor's retaining wall next to the garage. This option provides an opportunity for the planting of a landscape screen which complies with Design Review Guideline V-5.

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 Henn

Ayes: Kellogg, Robertson, Henn

Noes: None

Recused: Stehr

Absent: Levine, Thiel

Draft Housing Element The City's Housing Element Consultant, Barry Miller, updated the Commission on the status of the City's attempt to have its General Plan Housing Element Update certified by the California Department of Housing and Community Development (HCD). Mr. Miller referenced the state's latest letter, dated October 7, requesting several additional revisions. Mr. Miller explained the process and the outstanding issues, voicing confidence that the City can comply with the state's requests and receive a pre-certification letter prior to requesting City Council adoption of the Housing Element Update. The Commission agreed that in order to expedite the process and given the Commission's August 9 approval of the Draft, it is not necessary for the Commission to review the remaining minor changes to the Draft Addendum that are being requested by HCD.

Public testimony was received from:

Rajeev Bhatia, an urban planner and new Piedmont resident, offered his expertise and experience in dealing with HCD in matters of Housing Element certification and submitted a memo from his firm outlining the consequences for cities which fail to receive housing element certification. The Commission thanked Mr. Bhatia for his input and offer of assistance.

ADJOURNMENT

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