

## PIEDMONT PLANNING COMMISSION

### Regular Meeting Minutes for Monday, November 14, 2011

A Regular Session of the Piedmont Planning Commission was held November 14, 2011, 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 November 4, 2011.

#### CALL TO ORDER

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

#### ROLL CALL

Present: Commissioners Phillip Chase, Michael Henn, Jim Kellogg, Melanie Robertson and Alternate Commissioner Tom Zhang

Absent: Commissioner Clark Thiel (excused)

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

City Council Liaison: Councilmember Margaret Fujioka

#### INTRODUCTION

The City Planner introduced the City's newest Planning Technician Jennifer Feeley.

#### CONSENT CALENDAR

There was no consent calendar.

#### PUBLIC FORUM

There were no speakers for the public forum.

#### APPROVAL OF MINUTES

##### **Resolution 15-PL-11**

RESOLVED, that the Planning Commission approves as submitted its meeting minutes of October 10, 2011.

Moved by Robertson, Seconded by Chase

Ayes: Henn, Kellogg, Robertson, Zhang

Noes: None

Abstain: Chase

Absent: Thiel

#### REGULAR CALENDAR

The Commission considered the following items of regular business:

##### **Fence Design Review 56 Sharon Avenue**

Mr. and Mrs. Robert Rachwald are requesting fence design review to make various front yard improvements including to: demolish and rebuild an existing stucco retaining wall; reconfigure the concrete entry steps; construct new stucco retaining walls, landings and entry columns; install new metal handrails; add new planting areas and exterior lighting; and make other landscaping improvements.

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

Alternate Commissioner Zhang recused himself from discussion and action on this application and left the chambers.

**Public testimony** was received from:

Nancy Kent, Project Landscape Architect, described the proposed improvements intended to create a more gracious street appearance and entry to the property. She also discussed the drainage problems along the street, noting her belief that the Public Works Department, rather than her client, should be responsible for devising a solution.

The Commission agreed that the proposal will significantly improve the aesthetics of the property and are nicely integrated with the house. There was discussion over the benefits of pulling the front retaining wall back a foot to allow a base planting strip to help screen the wall as well as provide an area for street drainage to seep into the ground. However, it was determined that such a design change would: (1) cause the wall to be misaligned with other existing neighborhood front retaining walls; (2) possibly increase the height of the wall; (3) result in a steeper stair riser height; (4) because there are no street curbs or sidewalks, the 1 ft. planting strip would likely be damaged by street traffic along this narrow road and also probably neglected by the homeowner; and (5) the proposed cascading vegetation over the wall is adequate to provide the desired landscape screening. The Commission did request that the east side property line be surveyed to insure that the proposed improvements are actually constructed on the applicant's own property.

#### **Resolution 91-DR-11**

WHEREAS, Mr. and Mrs. Robert Rachwald are requesting permission to make various front yard improvements including to: demolish and rebuild an existing stucco retaining wall; reconfigure the concrete entry steps; construct new stucco retaining walls, landings and entry columns; install new metal handrails; add new planting areas and exterior lighting; and make other landscaping improvements located at 56 Sharon 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 proposed improvements comply with Design Review Guidelines II-1, II-2, II-3, II-3(a), (b) & (c), II-6, II-6(a), (b) & (c), IV-1, IV-1(a) & (b), IV-2, IV-2(a), IV-3, IV-3(a), IV-4, IV-4(a) and IV-6.
2. The design is appropriate, considering its effect on neighboring properties' existing views, privacy and access to direct and indirect light because there is no impact. The project complies with the above-cited Guidelines.
3. The safety of residents, pedestrians, and vehicle occupants and the free flow of vehicular traffic are not adversely affected, considering the circulation pattern, parking layout and points of ingress and egress because there is no change in existing circulation patterns.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review application of Mr. and Mrs. Rachwald for construction at 56 Sharon Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

1. **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.
2. **Encroachment Permit.** Before the issuance of a building permit, the Property Owner shall apply for an encroachment permit to allow for the proposed construction within the public right-of-way or public easement.
3. **Geotechnical Report and Review.** At the option of the Building Official, the Property Owner may be required to submit a report prepared by a geotechnical engineer of the Property Owner'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.
4. **Construction Management Plan.** The Property Owner shall develop a comprehensive Construction Management Plan. 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 has 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 Inspection.
  - a. Stormwater BMPs for Construction. Property Owner shall implement (1) stormwater treatment Best Management Practices (BMPs) and (2) 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 Property Owner's Construction Management Plan.
5. **Property Survey.** The Property Owner shall provide a survey of the east property line to verify that all proposed improvements are being constructed on his own property.

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 Chase, Seconded by Robertson

Ayes: Chase, Kellogg, Henn, Robertson

Noes: None

Abstain: Zhang

Absent: Thiel

**Variance and  
Design Review  
958 Kingston Avenue**

Ms. Mary Heller is requesting variance and design review to construct an approximately 50 sq. ft. main floor expansion at the northeast corner of the residence; reconstruct and add a roof to the existing front entry porch; reconfigure the front entry walkway and stairs; construct a new entry ramp; make window modifications; install new metal railing; and make various landscape modifications. The requested variances are from: (1) Section 17.10.6 to allow the front entry ramp to extend to within 17 ft. 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 proposed side yard stairs to extend to within 1 ft. of the left (east) side property line in lieu of the code required minimum of a 4 ft. side yard setback.

Written notice was provided to neighbors. **One affirmative and four negative response forms** were received.

**Public testimony** was received from:

Mary Heller stated that the proposed improvements are intended to create a more gracious front entry, improve the home's side entry and make the home more functional for her needs.

Katherine Roha, Project Architect, described the design and landscaping of the proposed ADA accessible front ramp and side stairway.

Anthony Bliss referenced his response form in citing concerns that the proposal will impede PG&E access to his meters (currently access to his meters is through the applicant's property), proposed trees will shadow his front yard, the side stairs will be intrusive given their close proximity and the new windows will create privacy issues for his TV room.

The Commission supported application approval, agreeing that the proposal reflects a modest-sized addition that is consistent with the City's Design Review Guidelines and one which will greatly improve the usability and aesthetics of the applicant's property with minimal impact on neighboring property. In referencing Mr. Bliss' concerns, the Commission noted: (1) there is room for PG&E to access the meters via Bliss' own property; (2) in terms of side stair proximity, there is at least an 8 ft. side separation distance between the two homes as well as

a tall hedge divider; (3) new windows are not oversized and reasonably located -- there is at least a 10 to 11 ft. separation distance and the Bliss' have an opportunity to plant landscaping to mitigate privacy concerns; and (4) the proposed Japanese maple trees will not create any significant shadowing impact.

However, the Commission requested that the new front entry incorporate arch detailing similar to that over the home's three main front windows to better integrate the entry with the home's overall architectural style. The Commission also requested that the east property line be surveyed to verify that there will be no encroachment onto neighboring property.

**Resolution 254-V-11**

WHEREAS, Ms. Mary Heller is requesting permission to construct an approximately 50 sq. ft. main floor expansion at the northeast corner of the residence; reconstruct and add a roof to the existing front entry porch; reconfigure the front entry walkway and stairs; construct a new entry ramp; make window modifications; install new metal railing; and make various landscape modifications located at 958 Kingston 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 in the front and left (east) 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:

1. The project is categorically exempt under the California Environmental Quality Act, pursuant to Section 15301, Class 1(e).
2. The underlying lot and existing improvements present unusual physical circumstances, including but not limited to the fact that the setback encroachments are a pre-existing condition. Because of these circumstances, strictly applying the terms of this chapter would keep the property from being used in the same manner as other properties in the zone which conform to the zoning requirements.
3. The variances are compatible with the immediately surrounding neighborhood and the public welfare because there will be little change to existing conditions.
4. Accomplishing the improvement without variance would cause unreasonable hardship in planning, design, or construction because the existing house is already located within the setback and any improvements thereto necessitate variance.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the variance application of Ms. Heller for the above variances at 958 Kingston Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City.

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

Moved by Robertson, Seconded by Kellogg

Ayes: Chase, Kellogg, Henn, Robertson, Zhang

Noes: None

Absent: Thiel

#### **Resolution 254-DR-11**

WHEREAS, Ms. Mary Heller is requesting permission to construct an approximately 50 sq. ft. main floor expansion at the northeast corner of the residence; reconstruct and add a roof to the existing front entry porch; reconfigure the front entry walkway and stairs; construct a new entry ramp; make window modifications; install new metal railing; and make various landscape modifications located at 958 Kingston 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 area openings, breaks in the façade, line and pitch of the roof, materials, arrangements of structures on the parcel, and consistency with architectural forms) are aesthetically pleasing as a whole and harmonious with existing and proposed neighborhood development in that the proposed project complies with Design Review Guidelines II-1, II-2, II-3, II-3(a) through (d), II-4, II-6, II-6(a), (b) & (c), II-7 and II-7(a).
2. The design is appropriate, considering its effect on neighboring properties' existing views, privacy and access to direct and indirect light because it takes into consideration the placement of the front entry and windows. The project complies with the above-cited Guidelines.
3. The safety of residents, pedestrians, and vehicle occupants and the free flow of vehicular traffic are not adversely affected, considering the circulation pattern, parking layout and points of ingress and egress because there are no changes in existing circulation patterns. The project complies with the above-cited Guidelines.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review application of Ms. Heller for construction at 958 Kingston 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 Kingston Avenue;
2. The proposed windows shall be painted to match the remaining windows throughout the residence and have true or three-dimensional simulated divided light grids.
3. The design of the front of the porch shall incorporate an arched entry way similar to the existing archway detailing on the home; said design modification to be subject to staff review and approval.
4. The applicant shall provide a survey of the east property line to verify that the proposed improvements do not encroach onto neighboring property.

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

Moved by Robertson, Seconded by Kellogg

Ayes: Chase, Kellogg, Henn, Robertson, Zhang

Noes: None

Absent: Thiel

**Design Review and  
Fence Design Review  
101 Requa Road**

Mr. and Mrs. Gregory Young are requesting design review and fence design review to construct retaining walls and make various hardscape and landscape changes throughout the property; construct a fountain, outdoor kitchen, built-in-bench, fire pit and raised planting beds in the rear yard; install new fencing and railing; and add exterior lighting.

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

**Public testimony** was received from:

Jeff George, Project Landscape Architect, explained that the proposed project will correct existing erosion problems on the property, accent new ornamental planting areas, improve storage capability, screen trash bins and improve the usability and amenities of the rear yard. He noted that a survey of the front property line has been provided to the City.

The Commission supported application approval, agreeing that the improvements are attractively designed, will increase the usability,

enjoyment and functionality of this steep-sloped property and enhance the aesthetics of this very prominently viewed front yard.

**Resolution 284-DR-11**

WHEREAS, Mr. and Mrs. Gregory Young are requesting permission to construct retaining walls and make various hardscape and landscape changes throughout the property; construct a fountain, outdoor kitchen, built-in-bench, fire pit and raised planting beds in the rear yard; install new fencing and railing; and add exterior lighting located at 101 Requa Road, Piedmont, California, which construction requires design review; and

WHEREAS, after reviewing the application, plans and any and all testimony and documentation submitted in connection with such application, and after having visited subject property, the Piedmont Planning Commission finds that the 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 proposed improvements will not impact the size, mass and design of the existing house and the proposed landscaping is appropriate in terms of its detailing, scale and mass with the property. The project complies with Design Review Guidelines II-1, II-2 and II-3.
2. The design is appropriate, considering its effect on neighboring properties' existing views, privacy and access to direct and indirect light because the proposed improvements will create an excellent front yard streetscape exposure along Wildwood Avenue and Requa Road. The proposed interior property improvements do not materially impact neighbor view, light or privacy. The project complies with Design Review Guidelines II-6, IV-1, IV-2 and IV-4.
3. The safety of residents, pedestrians, and vehicle occupants and the free flow of vehicular traffic are not adversely affected, considering the circulation pattern, parking layout and points of ingress and egress because there is no change in existing circulation patterns and proposed front retaining walls will not obstruct traffic/pedestrian sight lines. The project complies with Design Review Guidelines V-10 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. Young for construction at 101 Requa Road, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

1. **Construction Management Plan.** The Property Owner shall develop a comprehensive Construction Management Plan. 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 has 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 Inspection.

- a. Stormwater BMPs for Construction. Property Owner shall implement (1) stormwater treatment Best Management Practices (BMPs) and (2) 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 Property Owner's Construction Management Plan.

2. **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.

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 Robertson

Ayes: Chase, Kellogg, Henn, Robertson, Zhang

Noes: None

Absent: Thiel

**Design Review and  
Fence Design Review  
621 Blair Avenue**

Mr. and Mrs. Rob Bloemker are requesting design review and fence design review to construct a new outdoor built-in barbeque, patio, dining area and 4 ft. high fence in the front yard area between the house and the street at the southeastern curve of Blair Avenue; a basketball hoop in the rear northern corner of the lot; an unenclosed 5,000 gallon propylene storage tank under the northwestern corner of the deck; a new storage bin behind the trellised parking space with a sheet metal cap; and other landscaping, fencing and architectural modifications.

Written notice was provided to neighbors. **One negative response form** was received.

**Public testimony** was received from:

Rob and Shannon Bloemker explained that the proposed small modifications to previously approved plans (March and September 2011) are designed to create more privacy, enhance outdoor enjoyment and to provide a clearer definition to the home's front entry. They also explained the materials, screening and function of the proposed water storage tank intended to provide reclaimed rain water for toilet and laundry purposes. The project qualifies as a LEED Platinum project.

The Commission supported application approval, agreeing after some discussion of alternative locations, that the proposed location of the dining patio will not be intrusive on the streetscape and is in keeping with the original architecture and layout of the home. The Commission requested that the Building Department insure that the manufacturing specifications of the water tank and the engineering of the proposed retaining walls and pad securing the tank comply with City building and seismic regulations.

**Resolution 314-DR-11**

WHEREAS, Mr. and Mrs. Rob Bloemker are requesting permission to construct a new outdoor built-in barbeque, patio, dining area and 4 ft. high fence in the front yard area between the house and the street at the southeastern curve of Blair Avenue; a basketball hoop in the rear northern corner of the lot; an unenclosed 5,000 gallon propylene storage tank under the northwestern corner of the deck; a new storage bin behind the trellised parking space with a sheet metal cap; and other landscaping, fencing and architectural modifications located at 621 Blair 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 project complies with Design Review Guidelines II-2 and II-3.
2. The design is appropriate, considering its effect on neighboring properties' existing views, privacy and access to direct and indirect light because: (1) the proposed basketball court is tucked into the western corner of the lot and is not readily visible to neighbors; (2) the proposed parking area improvements are screened by the property's steep gradient/topography; and (3) the proposed dining patio utilizes an existing stair and wall at this location and is not higher than these existing features nor is it located in close proximity to any adjoining properties. The project complies with Design Review Guidelines IV-1, IV-2, IV-4, V-1, V-2 and V-5
3. The safety of residents, pedestrians, and vehicle occupants and the free flow of vehicular traffic are not adversely affected, considering the circulation pattern, parking layout and points of ingress and egress because there is no change in existing circulation patterns. The project complies with Design Review Guidelines V-10 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. Bloemker for construction at 621 Blair

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

1. **Prior Conditions.** This approval shall be subject to all relevant provisions of the prior conditions of approval required of Applications #10-0332 and #11-244. If modifications to the Construction Management Plan or Construction Completion Schedule need to be made to accommodate this work, they shall be subject to review and approval by the Building Official.
2. **Defense of Legal Challenges.** If there is a third party administrative, legal or equitable action challenging the project approvals, including CEQA issues, the Property Owner shall defend and indemnify the City against any liability, fees and costs arising out of the defense, including the costs of City's own counsel. If such an action is filed, the Property Owner and City shall then enter into an agreement regarding selection of counsel and other provisions related to the defense. For this purpose, "City" includes the City and its elected and appointed officials, agents, officers and employees.
3. **Approved Plan Set.** The approved plans are those submitted on October 31, 2011 with modifications submitted on November 4, 2011, after notices to neighbors were mailed and the application was available for public review. In addition, staff shall insure that the design of the proposed water tank enclosure complies with the plans dated November 7, 2011 and that the bracing and anchoring of this tank be examined and approved by the Building Department in terms of compliance with seismic regulations.
4. **Landscaping.** The applicant shall retain existing landscaping that serves as a visual buffer between the proposed dining patio and Blair Avenue sidewalk.

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 Chase

Ayes: Chase, Kellogg, Henn, Robertson, Zhang

Noes: None

Absent: Thiel

The Commission recessed for dinner at 7:00 p.m. and reconvened at 7:30 p.m.

**Design Review  
209 Crocker Avenue**

Mr. and Mrs. Stephen Pratt are requesting design review to construct a new deck at the rear of the house above the existing driveway; add a new set of stairs between the house and driveway; make interior

modifications; make changes to the windows and doors; remove a chimney; and add new exterior lighting. A similar application was denied by the Commission on October 10, 2011.

Written notice was provided to neighbors. **One affirmative response form** was received.

**Public testimony** was received from:

John Malick, Project Architect, described the design changes made to the plans in response to the October meeting.

The Commission agreed that the revised design was responsive to Commission requests and resolved concerns related to garage and driveway ingress/egress.

**Resolution 321-DR-11**

WHEREAS, Mr. and Mrs. Stephen Pratt are requesting permission to construct a new deck at the rear of the house above the existing driveway; add a new set of stairs between the house and driveway; make interior modifications; make changes to the windows and doors; remove a chimney; and add new exterior lighting located at 209 Crocker Avenue, Piedmont, California, which construction requires design review; and

WHEREAS, after reviewing the application, plans and any and all testimony and documentation submitted in connection with such application, and after having visited subject property, the Piedmont Planning Commission finds that the 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, layout, massing, 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 project complies with Design Review Guidelines II-1, II-3(a) and II-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 material impact. The project complies with Design Review Guidelines II-1 and II-3(a).
3. The safety of residents, pedestrians, and vehicle occupants and the free flow of vehicular traffic are not adversely affected, considering the circulation pattern, parking layout and points of ingress and egress because there is no adverse impact on existing on-site parking. The project complies with Design Review Guideline II-5.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review application of Mr. and Mrs. Pratt for construction at 209 Crocker Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

1. **Construction Management Plan.** The Property Owner shall develop a comprehensive Construction Management Plan. 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 has 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 Inspection.

2. **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.

3. **Contractor's General Liability Insurance.** To ensure that the contractor doing work in the City will be responsible for damages caused by the work to City property or to neighboring property, the Property Owner 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. The insurance shall include builder's risk. The insurance shall include an endorsement requiring 30 days' notice to the City if the insurance is cancelled or changed, and Property Owner shall immediately arrange for substitute insurance coverage.

As an alternative to requiring each subcontractor to obtain General Liability Insurance, the Property Owner may require the General Contractor to obtain an endorsement to cover his or her subcontractors.

If the Property Owner does not have a general contractor, the Property Owner shall maintain property insurance, including builder's risk and coverage for subcontractors, which is substantially equivalent to the contractor's requirement of this section.

4. **Defense of Legal Challenges.** If there is a third party administrative, legal or equitable action challenging the project approvals, including CEQA issues, the Property Owner shall defend and indemnify the City against any liability, fees and costs arising out of the defense, including the costs of City's own counsel. If such an action is filed, the Property Owner and City shall then enter into an agreement regarding selection of counsel and other provisions related to the defense. For this purpose, "City" includes the City and its elected and appointed officials, agents, officers and employees.

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 Chase, Seconded by Kellogg

Ayes: Chase, Kellogg, Henn, Robertson, Zhang

Noes: None

Absent: Thiel

**Second Unit Permit  
with Parking Exception  
and Variance  
290 Scenic Avenue**

Mr. and Mrs. Ahmad Mohazab are requesting a Second Unit Permit with a Parking Exception to construct a new 300 sq. ft. rent restricted second unit above the existing garage. The requested variances are from: (1) Section 17D.5(b) to allow a floor area ratio of 60.48% in lieu of the code permitted maximum of 50%; (2) Section 17D.5(d) to allow a front yard setback of 2 ft. 4 in. in lieu of the code required minimum of a 20 ft. setback; and (3) Section 17D.5(d) to allow a right (north) side yard setback of 2 ft. 10 in. under Scheme B in lieu of the code required minimum of a 4 ft. side yard setback. The parking exception is requested because the existing 4-bedroom house has a non-conforming 2-car garage (each space measuring 8'2" x 18' 4" in lieu of the 9'x 20' requirement) and the application proposes a new second unit without providing an additional covered, conforming parking space. A similar application was denied by the Commission on September 12, 2011.

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

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

**Public testimony** was received from:

Ahmad Mohazab explained the design changes made in response to the September meeting to reduce the visual mass of the addition. He stated that although Scheme A was submitted as an option for avoiding the need for a side yard setback variance by eliminating the second unit's eave overhang along one side of the building, he strongly preferred approval of Scheme B which retains this eave projection in order to preserve architectural integrity and maintain the structure's existing building lines.

Stephen Tindle, Paul Pitner and Kate Grasman all voiced support for project approval, emphasizing that the proposed project is architecturally compatible with the existing home and neighborhood and the addition of the second unit will not have a detrimental impact because there is no parking congestion problem in this area of Scenic Avenue.

The Commission was divided in its support for application approval, debating the pros and cons of the application at length. Those Commissioners in support of approval cited the following reasons: (1) the revised design was responsive to Commission requests; (2) the proposed addition will enhance property aesthetics; (3) there will be minimal impact on neighbor views, privacy and on-street parking; (4) the requested variances are consistent with existing neighborhood conditions -- many homes in the immediate area exceed FAR coverage

limits and have structures within the front and side yard setbacks; (5) the property will not visually appear to be overbuilt from the streetscape perspective -- the property's steep topography is a contributing factor in exceeding FAR coverage limits; and (6) the City's General Plan encourages the creation of second unit housing.

Those Commissioners in opposition to application approval cited the following reasons: (1) concern over setting a precedent for approving additional living space within front setbacks, especially when alternative locations for such additions are available; (2) the requested variances are numerous and significant in nature and there is no unusual circumstances or physical hardships present in this particular application to justify variance approval -- the Commission should be consistent in its decisions and adherence to building regulations; (3) unlike most second units approved by the Commission, this proposed second unit is not within an existing building envelope and involves new construction within a front setback; (4) the property already significantly exceeds FAR coverage limits because of its large size and previously approved build-out of the basement level; and (5) an option exists for adding a second unit at the lower level (below an existing deck). Regardless of their position with regard to application approval, all Commissioners voiced their preference for Design Scheme B in order to preserve the architectural integrity of the property.

The City Planner explained the options and consequences of a split vote decision.

**Resolution 209-V-11**

WHEREAS, Mr. and Mrs. Ahmad Mohazab are requesting a Second Unit Permit with a Parking Exception to construct a new 300 sq. ft. rent restricted second unit above the existing garage located at 290 Scenic 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 exceed the maximum floor area ratio and to construct within the front and side yard setbacks; and

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

1. The project is categorically exempt under the California Environmental Quality Act, pursuant to Section 15301, Class 1(e)
2. The underlying lot and existing improvements present unusual physical circumstances, including but not limited to the unique characteristics of the neighborhood and the context of neighboring houses which front, in varying degrees, on a similar line along the street. In order to achieve a second unit on this property that is architecturally significant and congruent with the original house, the requested variances are necessary. Because of these circumstances, strictly applying the terms of this chapter would keep the property from

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

2. The variances are compatible with the immediately surrounding neighborhood and the public welfare because the proposed design is consistent internally with the rest of the structure and architecturally relates to other houses along the street. The project improves the neighborhood without any impact on the public welfare.

3. Accomplishing the improvement without variance would cause unreasonable hardship in planning, design, or construction because there is only a nominal excess in the currently allowed coverage under Section 17.22.2 and said coverage is far below the prevailing floor area ratio coverage in the neighborhood which precedes the date of current regulations. Other second unit location options on this property would impose an aesthetic and practical hardship on the applicant.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the variance application of Mr. and Mrs. Mohazab for the above variances at 290 Scenic Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City.

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

Moved by Chase, Seconded by Henn

Ayes: Chase, Henn

Noes: Kellogg, Zhang

Recused: Robertson

Absent: Thiel

**VARIANCES DEEMED APPROVED**

**Resolution 209-DR-11**

WHEREAS, Mr. and Mrs. Ahmad Mohazab are requesting a Second Unit Permit with a Parking Exception to construct a new 300 sq. ft. rent restricted second unit above the existing garage located at 290 Scenic Avenue, Piedmont, California, which construction requires design review; and

WHEREAS, after reviewing the application, plans and any and all testimony and documentation submitted in connection with such application, and after having visited subject property, the Piedmont Planning Commission finds that the proposal, per Scheme B, 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, mass, line and pitch of the roof and materials. The distance between the proposed upper level addition/expansion and adjacent residences is reasonable and appropriate due to the existing topography and neighborhood development pattern. Upper level setbacks greater than the setbacks required for the lower level have been considered and are necessary to reduce the impact from the mass on the street. In addition, the applicant has provided evidence that there are similar garages in the neighborhood, with upper levels above, located within the front setback and that proposed Design Scheme B is the preferable option for maintaining design consistency. The project complies with Design Review Guidelines II-1, II-2, II-3, II-3(c) & (d) and II-5.

2. The proposed upper level addition/expansion has been designed in a way that reasonably minimizes view and light impacts on neighboring properties. In addition, it has been determined that the view from one of the neighboring properties is not a protected view as defined in Section 17.2.77. The project complies with Design Review Guidelines II-1, II-2, II-3, III-1 and III-2.

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. Many homes in the neighborhood have double-story structures over the garage. The project complies with Design Review Guidelines II-1, II-2, II-3, II-4, II-5, III-1 and III-2.

4. The safety of residents, pedestrians, and vehicle occupants and the free flow of vehicular traffic are not adversely affected, including on-site parking and additional parking required which is waived under the low income rent aspect of this project. In addition, public testimony has indicated that there is adequate on-street parking in the neighborhood and have reported no parking problems. The project complies with Design Review Guidelines II-1 through III-7 as set forth in the staff report.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review application of Mr. and Mrs. Mohazab for construction at 290 Scenic Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

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

a. Stormwater BMPs for Construction. Property Owner shall implement: (1) stormwater treatment Best Management Practices (BMPs); and (2) 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.

b. Renovation / New Construction. Pursuant to Section 17.32.6 of the Municipal Code, if for any reason more than 70% of the physical structure (as determined by the Building Official) is demolished or destroyed, the building shall conform to new building and planning Code requirements. If this occurs during demolition, all work must stop and a new hearing and public review by the Planning Commission is required.

2. Construction Completion Schedule. Work on the Project, once begun, shall be promptly executed with continuous good faith and reasonable progress. Since timely completion of this Project is of the essence, the Property Owner 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 Rough Framing;
- ii. Completion of Electrical;
- iii. Completion of Plumbing;
- iv. Completion of Mechanical;
- v. Completion of Fire Sprinklers;
- vi. Completion of Second Unit;
- vii. Completion of Hardscaping and Landscaping; and

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 has the option at any time thereafter to make a claim against

the Property Owner's Performance Security, if one is required, in order to complete the benchmark.

3. C&D Compliance. Compliance with Chapter 9 Article III of the Municipal Code, which governs the recycling of construction and demolition debris, is required for all phases of this project.

4. Contractor's General Liability Insurance. To ensure that the contractor doing work in the City will be responsible for damages caused by the work to City property or to neighboring property, the Property Owner 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. The insurance shall include builder's risk. The insurance shall include an endorsement requiring 30 days' notice to the City if the insurance is cancelled or changed, and Property Owner shall immediately arrange for substitute insurance coverage.

As an alternative to requiring each subcontractor to obtain General Liability Insurance, the Property Owner may require the General Contractor to obtain an endorsement to cover his or her subcontractors.

If the Property Owner does not have a general contractor, the Property Owner shall maintain property insurance, including builder's risk and coverage for subcontractors, which is substantially equivalent to the contractor's requirement of this section.

5. Defense of Legal Challenges. If there is a third party administrative, legal or equitable action challenging the project approvals, including CEQA issues, the Property Owner shall defend and indemnify the City against any liability, fees and costs arising out of the defense, including the costs of City's own counsel. If such an action is filed, the Property Owner and City shall then enter into an agreement regarding selection of counsel and other provisions related to the defense. For this purpose, "City" includes the City and its elected and appointed officials, agents, officers and employees.

6. Approved Plan Set. The approved plans are those submitted on October 31, 2011, including Scheme B.

7. Arborist's Report. Before the issuance of a building permit, the Property Owner shall submit an Arborist's Report that includes tree preservation measures to preserve the existing oak trees on the City's right of way along La Salle Court. The tree preservation measures shall be on the appropriate sheets of the construction plans. The arborist shall be on-site during critical construction activities, including 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 used 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. Before the Final Inspection, the Arborist shall file

a report to the City 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 Chase, Seconded by Henn

Ayes: Chase, Henn

Noes: Kellogg, Zhang

Recused: Robertson

Absent: Thiel

**DESIGN REVIEW DEEMED APPROVED**

**Resolution 209-SU-11**

WHEREAS, Mr. and Mrs. Ahmad Mohazab are requesting a Second Unit Permit with a Parking Exception to construct a new 300 sq. ft. rent restricted second unit above the existing garage located at 290 Scenic Avenue, Piedmont, California; and

WHEREAS, after reviewing the application, plans and any and all testimony and documentation submitted in connection with such application, and after having visited subject property, the Piedmont Planning Commission finds that the proposal conforms with the criteria and standards of Section 17D.6(b)2 of the Piedmont City Code:

1. The parking exception will not be detrimental to the health, safety or general welfare of persons residing in the neighborhood and will not negatively impact traffic safety or emergency vehicle access to residences or create hazards by obstructing view to or from adjoining sidewalks and streets. The proposed unit will be located in a fully residential neighborhood, with no through traffic. Testimony from neighborhood residents has indicated that there is adequate parking available and there are no sidewalks in this neighborhood.
2. The parking exception will not adversely affect the character of the surrounding neighborhood. There has been no demonstration that the proposed second unit will adversely impact the neighborhood's current parking load.
3. There is sufficient street parking available to accommodate the parking exception and the second unit is located within 1/3 mile of a public transit stop because of the Scenic steps.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the second unit with a

parking exception application of Mr. and Mrs. Mohazab for construction at 290 Scenic Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

1. Second Unit Declaration. In compliance with Section 17D.6(d), prior to the issuance of a building permit, the completed, signed and notarized *Declaration of Restrictions - Property with Approved Second Dwelling Unit* form shall be recorded.

2. Very Low Income Second Unit Declaration. In compliance with Section 17D.6(e), prior to the occupation of the second unit, the completed, signed and notarized *Declaration of Rent Restrictions for Second Unit Affordable to Very Low Income Households* form shall be recorded.

3. Rent Certification. In compliance with Section 17D.6(e), prior to the occupation of the second unit, the completed, signed and notarized *Rent-Restricted Second Unit Affordable Rent Certification* form shall be submitted. The form shall be submitted annually to provide evidence of continued compliance with the California Department of Housing and Community Development State Income Limits for Alameda County.

4. 10 Year Requirement. The second unit shall remain a very low income rent-restricted unit per the California Department of Housing and Community Development State Income Limits, adjusted annually for a period of 10 years from the date of this approval. Thereafter, the unit shall no longer be required to be a rent-restricted unit, but may continue to be used as a second unit.

5. Annual Rental Tax. The annual City of Piedmont rental tax is waived for the first year. Thereafter, the property owners shall annually comply with all required rental taxes and fees.

Moved by Chase, Seconded by Henn

Ayes: Chase, Henn

Noes: Kellogg, Zhang

Recused: Robertson

Absent: Thiel

**SECOND UNIT WITH PARKING EXCEPTION DEEMED APPROVED**

**Design Review  
55 Highland Avenue**

Mr. and Mrs. Stanley Melby are requesting retroactive design review approval to construct a 240 sq. ft. addition to the residence by enclosing the rear covered porch, add exterior lighting, and make various changes to the interior including the conversion of a half-bath to a full bath.

Written notice was provided to neighbors. **One affirmative response form** was received.

Commissioner Kellogg recused himself from discussion and action on this application and left the chambers.

**Public testimony** was received from:

Scott Fitzerrell, Project Designer, stated that the rear porch was enclosed in early 2010 and the bay window was part of a permitted 2009 kitchen remodel project.

The Commission supported application approval, agreeing that the addition was attractively designed, well-integrated with the house and adds value and enjoyment to the property with minimal impact on neighbors.

**Resolution 330-DR-11**

WHEREAS, Mr. and Mrs. Stanley Melby are requesting retroactive permission to construct a 240 sq. ft. addition to the residence by enclosing the rear covered porch, add exterior lighting, and make various changes to the interior including the conversion of a half-bath to a full bath located at 55 Highland 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 it is a well-integrated addition that conforms with the existing architectural style of the house.
2. The design is appropriate, considering its effect on neighboring properties' existing views, privacy and access to direct and indirect light because the improvements face toward an interior courtyard and are not visible from the street.
3. The safety of residents, pedestrians, and vehicle occupants and the free flow of vehicular traffic are not adversely affected, considering the circulation pattern, parking layout and points of ingress and egress because there is no change in existing circulation patterns.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review application of Mr. and Mrs. Melby for construction at 55 Highland 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 Zhang, Seconded by Robertson

Ayes: Chase, Henn, Robertson, Zhang

Noes: None

Recused: Kellogg

Absent: Thiel

**Planning Determination  
209 Hillside Avenue**

Mr. and Mrs. Jeff Meredith are requesting retroactive approval for modifications to construction completed under a previously approved application that did not receive a final permit. The unapproved construction created a room eligible for use as a bedroom, but did not provide the required 3rd carport parking space under a proposed rear deck expansion. The application seeks to eliminate the need to provide the deck extension/parking space through new construction modifications to an existing mid-level bedroom so that it is no longer eligible for use as a bedroom.

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

**Public testimony** was received from:

Denise Meredith stated that she purchased the property in 1998 as a 4-bedroom residence and that the mezzanine level room has always been used as an office because of its small size (68 sq. ft.), low ceiling height and lack of heat and closet space. She requested application approval so that mistakes made by a previous owner can be corrected and she can proceed with the sale of her home.

Adam Betta, the applicant's real estate agent, and Maureen Kennedy, the real estate agent representing the prospective new buyers, agreed that the home has always been considered and represented as a 4-bedroom residence, with a small office. They stressed that since this mid-level room is so small, lacks heat and a closet and fails to meet bedroom ceiling height criteria, it has never been considered or used as a bedroom.

Michael Dicke, the prospective new buyer, stated that this 4 bedroom house, with a small office, perfectly satisfies his housing needs.

The Commission supported application approval as a way to officially correct mistakes made by a prior owner and properly record the property as a 4-bedroom house with two conforming off-street parking spaces. The Commission determined that the existing mid-level room is not a room eligible for use as a bedroom for the reasons cited by the speakers.

**Resolution 343-DR-11**

WHEREAS, Mr. and Mrs. Jeff Meredith are requesting retroactive approval of modifications to construction completed under a previously approved application that did not receive a final permit. The unapproved construction created a room eligible for use as a bedroom, but did not provide the required 3rd carport parking space under a proposed rear deck expansion. The application seeks to eliminate the

need to provide the deck extension/parking space through new construction modifications to an existing mid-level bedroom so that it is no longer eligible for use as a bedroom located at 209 Hillside Avenue, Piedmont, California; and

WHEREAS, after reviewing the application, plans and any and all testimony and documentation submitted in connection with such application, and after having visited subject property, the Piedmont Planning Commission finds that the project is categorically exempt under the California Environmental Quality Act, pursuant to Section 15301, Class 1(e) and the proposal conforms with the intent of Section 17.20.1 of the Piedmont City Code in that:

1. The existing mid-level room is not a bedroom under any reasonable interpretation of the City Code as evidenced by testimony from the applicant, real estate agents and a prospective buyer related to the room's inadequate ceiling height and size under the Building Code and lack of heat; and
2. While the existing lower level of the home has been used as a bedroom, even though this room fails to meet code requirements regarding ceiling height and ventilation, the current application will correct oversights involved with a prior unresolved permit process; and
3. That this interpretation meets the intent of Section 17.20.1(c) of the City Code in that it promotes the general welfare by permitting development that does have qualities that meet the intent of Chapter 17.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the application of Mr. and Mrs. Meredith for construction at 209 Hillside Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

1. **Payment of Fees.** Prior to the receipt of a final inspection, or close of escrow, the applicants shall reimburse the City for the direct reproduction costs of plans for Commission review.
2. **Defense of Legal Challenges.** If there is a third party administrative, legal or equitable action challenging the project approvals, including CEQA issues, the Property Owner shall defend and indemnify the City against any liability, fees and costs arising out of the defense, including the costs of City's own counsel. If such an action is filed, the Property Owner and City shall then enter into an agreement regarding selection of counsel and other provisions related to the defense. For this purpose, "City" includes the City and its elected and appointed officials, agents, officers and employees.
3. **Notice of Restricted Use.** The City shall record a Notice of Restricted Use to alert all future owners of this property that the existing mid-level room is not eligible for use as a bedroom.



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 Chase, Seconded by Kellogg

Ayes: Chase, Kellogg, Henn, Robertson, Zhang

Noes: None

Absent: Thiel

### **Second Unit Code**

The City Planner announced that over the next few months, staff will be submitting proposed changes to the City's Second Unit Code (Chapter 17D) for Commission review and input prior to any action recommending City Council adoption of said code changes. The proposed changes are intended to implement General Plan Housing Element program objectives, encourage and incentivize certain underserved unit types, refine the Code provisions for clarity and consistency and streamline application procedures. She then provided a brief history and overview of the City's second unit regulations as an introduction to the upcoming review process. She suggested that public hearings on these changes be included as part of the Commission's review process.

#### **Public testimony** was received from:

George Kersh requested and received a copy of the staff report on this item.

Maureen Kennedy advised the Commission that current real estate appraisal practices are identifying illegal second units and forcing the removal of these units. She also noted that neither second unit tenants nor the City's 10 year rent restricted time periods are viewed by prospective buyers as deterrents to property purchase.

Margaret Fujioka inquired as to an expected timetable when Second Unit code changes would be submitted for Council review and approval.

During Commission discussion of this issue, the following suggestions were made: (1) a re-examination of the square footage parameters for "low" and "very low" income second units with parking exception be conducted with the goal of increasing the size differential between these two types of units; (2) incentive options be developed to encourage more "extremely low" and "low" income units to be created; (3) consider ways to encourage second units to be included in new home construction applications and plans; (4) examine whether the City's 10-year time period on restricted rent units discourages residents from creating second units; and (5) schedule Commission public hearings/discussion of proposed second unit code changes as the first

item of regular business on agendas, with an exact length of time specified for discussion (e.g., 1 hour) so that applicants and residents can plan their appearance at meetings accordingly.

**ADJOURNMENT**

There being no further business, Chairman Henn adjourned the meeting at 10:10 p.m.