

PIEDMONT PLANNING COMMISSION

Regular Meeting Minutes for Monday, April 9, 2012

A Regular Session of the Piedmont Planning Commission was held April 9, 2012, 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 March 30, 2012.

CALL TO ORDER

Chairman Henn called the meeting to order at 5:05 p.m. He introduced and welcomed newly appointed Alternate Commissioner Susan Ode and congratulated Commissioner Tom Zhang on his appointment as a regular commissioner.

ROLL CALL

Present: Commissioners Phillip Chase, Michael Henn, Jim Kellogg, Melanie Robertson and Alternate Commissioner Susan Ode

Absent: Commissioner Tom Zhang (excused)

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

ELECTION OF OFFICERS

Resolution 8-PL-12

RESOLVED, that the Planning Commission selects Commissioner Phillip Chase to serve as Commission Chair and Commissioner Tom Zhang to serve as Vice Chair until March 31, 2013.

Moved by Robertson, Seconded by Kellogg

Ayes: Chase, Henn, Kellogg, Robertson, Ode

Noes: None

Absent: Zhang

CONSENT CALENDAR

There was no consent calendar.

PUBLIC FORUM

There were no speakers for the public forum.

APPROVAL OF MINUTES

Resolution 9-PL-12

RESOLVED, that the Planning Commission approves as submitted its meeting minutes of March 12, 2012.

Moved by Kellogg, Seconded by Henn

Ayes: Chase, Henn, Kellogg, Robertson

Noes: None

Abstain: Ode

Absent: Zhang

REGULAR CALENDAR

The Commission considered the following items of regular business:

Design Review & Fence Design Review 96 La Salle Avenue

Mr. and Mrs. Ed Schneider are requesting design review and fence design review to make various site improvements at the rear of the property, including: widen the driveway gate; repave and widen the driveway; replace fencing and retaining walls along the south and west property lines; and construct a new garbage enclosure.

The Planner stated that the application proposes to demolish and replace retaining walls and fencing located on the neighboring property at 312 Sea View Avenue, owned by Mr. and Mrs. Tyler Johnston, and relocate said improvements on the applicant's property. Therefore, staff has allowed the proposed construction to be submitted within the scope of one design review application, rather than two (one each by the applicant and the Johnstons). The caveats to this single application process are:

- the applicants must state that there is no proposed exchange of property or lot line adjustment;
- the owners of 312 Sea View must submit their written approval of the dated plans and the proposed demolition and construction on both of the two properties; and
- the owners of 312 Sea View must get a zero cost permit for the construction on their property at the property line

The Planner stated that the first two caveats have been satisfied and the third requirement is a proposed condition of project approval.

Written notice was provided to neighbors. **One affirmative response form** was received. **Correspondence** was received from: Tyler & Melanie Johnston

Public testimony was received from:

Philip Going, Project Architect, described the proposed improvements mutually agreed upon by the applicants and their neighbor at 312 Sea View, noting that the height of the new fence is the same as the one it replaces and the 3 ft. widening of the driveway will improve ingress/egress as well as traffic sight lines for vehicles entering and exiting the property. In response to Commission questioning, Mr. Going confirmed that the property lines have been surveyed and all the new improvements will be located on the applicant's property.

The Commission supported application approval, agreeing that the improvements are attractively designed, involve no adverse impact on adjacent neighbors and improve vehicular safety. The Commission complimented the applicant for sensitively detailing the side of the new wall facing the southwest neighbor with a grape stake trim so as to match existing conditions on this neighboring property.

Resolution 30-DR-12

WHEREAS, Mr. and Mrs. Ed Schneider are requesting permission to make various site improvements at the rear of the property, including: widen the driveway gate; repave and widen the driveway; replace fencing and retaining walls along the south and west property lines; and construct a new garbage enclosure located at 96 La Salle 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 the existing neighborhood and with the architectural character of the residence. The proposal to add wood grape stake trim on the south face of the retaining wall continues the wood fence treatment that pre-exists on this neighboring property at 312 Sea View Avenue. The project complies with Design Review Guidelines IV-1, IV-2, IV-3 and IV-5.
2. The design is appropriate, considering its effect on neighboring properties' existing views, privacy and access to direct and indirect light because the new retaining wall is essentially at the same height and location as the existing wall it replaces. The project complies with Design Review Guidelines IV-1, IV-2, 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. In fact, the proposed widening of the driveway will improve the property's vehicular ingress/egress and the use of pervious pavers as the driveway surface is appropriate and architecturally appealing. The project complies with Design Review Guideline V-7.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review application of Mr. and Mrs. Schneider for construction at 96 La Salle Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

1. No exchange of property or lot line adjustment between 96 La Salle Avenue and 312 Sea View Avenue are approved within the scope of this application;
2. Because the project proposes demolition and construction of features located on the neighboring property at 312 Sea View Avenue, the owners of 312 Sea View Avenue must submit an application for a "zero cost" building permit along with the "full cost" building permit application submitted by the owners of 96 La Salle Avenue for the approved construction;
3. 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.
4. 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 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 Hardscaping and Landscaping; and
 - viii. any further construction benchmarks and conditions of occupancy as may be determined by the Director of Public Works.
 - b. Before the Project begins, the Director of Public Works shall make a determination as to the reasonableness of the proposed completion dates applicable to the Project, and that determination shall constitute the "Approved Schedule" and be binding on the Property Owner. The City may, at the Property Owner's sole cost, engage the services of a consultant to review the Property Owner'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.
5. C&D Compliance. Compliance with Chapter 9 Article III of the Municipal Code, which governs the recycling of construction and demolition debris, is required for all phases of this project.
 6. 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.

7. The new retaining wall along the west property line at the southwest corner of the property shall be completely within the applicants' property, excluding the grape stake trim facing the 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 Kellogg, Seconded by Robertson

Ayes: Chase, Henn, Kellogg, Robertson, Ode

Noes: None

Absent: Zhang

**Conditional Use Permit
1331 Grand Avenue**

Drs. Dale Herrero, DDS and Jill Martenson, DDS, of Piedmont Dental by Design, are requesting renewal of a conditional use permit to continue to provide dental services at 1331 Grand Avenue. Dr. Herrero bought the lot and constructed the building 30 years ago and has operated his dental practice there ever since. The application proposes to continue to operate the dental office on the second floor of the 2-story building as follows:

Days & Hours of Operation: Monday-Thursday, 7:00 a.m. to 5:00 p.m.

Number of On-Site Parking Spaces: 7 (4 staff, 3 visitors)

Types of Staff/Personnel: 2 offices, 5 clinical staff members (currently 7 staff members, requesting approval for 9)

Written notice was provided to neighbors. **Three affirmative response forms** were received. **Correspondence** was received from: Gary Theut; Jennifer Colton

Public testimony was received from:

Dale Herrero stated that he has operated his dental practice at this site for 30 years and the requested permit renewal does not propose any significant change in existing use or staffing levels. He requested a 10 year term of renewal. He stated that even though the practice is not currently open on Fridays and he has no pending or future intention to reinstitute Friday hours, he requested that the renewal permit allow Friday hours (7:00 a.m. to 5:00 p.m.) to provide flexibility over the next 10 year period.

The Commission supported application approval, agreeing that the dental practice is a long-established business in Piedmont that has served Piedmont residents well, there is adequate on-site parking to accommodate staff and patients and there is no material change in existing uses or conditions. The Commission also supported modifying

the proposed application to include in the *Days & Hours of Operation*:
Fridays from 7:00 a.m. to 5:00 p.m.

Resolution 41-CUP-12

WHEREAS, Drs. Dale Herrero and Jill Martenson are requesting a Conditional Use Permit to continue to operate a dental office at 1331 Grand Avenue, Piedmont, California, and;

WHEREAS, the Piedmont Planning Commission has reviewed the application, the staff report, and any and all other documentation and testimony submitted in connection with the application and has visited the 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 use is of benefit to Piedmont residents in that it provides dental service to the community.
3. The use will be properly related to other land uses and transportation and service facilities in the vicinity in that dental services and other medical offices are located along Grand Avenue which is a commercially zoned area.
4. Under all the circumstances and conditions of the particular case, the use will not have a material adverse effect on the health or safety of persons residing or working in the vicinity. The use is supportive of improving residents' dental and medical health.
5. The use will not be contrary to the standards established for the zone in which it is to be located. The use is located with Zone D which allows business offices and other commercial uses.
6. The use will not contribute to a substantial increase in the amount of noise or traffic in the surrounding area. There is no material change in the existing use.
7. The use is compatible with the General Plan and will not adversely affect the character of the surrounding neighborhoods or tend to adversely affect the property values of homes in the surrounding neighborhoods. There is no material change in the existing use or activity level at the site.
8. Adequate provision for driveways to and from the property has been made; facilities for ingress and egress from secondary streets instead of arterials, where possible, have been made; provision for parking in compliance with this Chapter 17 has been made, together with sufficient agreements to enforce the carrying out of such plans as may be required by the Council.
9. The plans conform to all other laws and regulations of the City, provided, however, that the Council shall have the right to require front, rear and side yard setbacks greater than those otherwise provided in the laws and regulations of the City if the Council finds that such

larger front, rear and side yard areas are necessary to provide for the health, safety and general welfare of the residents of Piedmont in accordance with its zoning laws.

RESOLVED, that in consideration of the findings and facts set forth above, the Piedmont Planning Commission recommends approval by the City Council of the application for a conditional use permit by Drs. Herrero and Martenson for property located at 1331 Grand Avenue, Piedmont, subject to the following conditions:

1. The term of the approval shall be 10 years

2. 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. The proposed *Days & Hours of Operation* be revised to include Fridays, from 7:00 a.m. to 5:00 p.m.

Moved by Henn, Seconded by Ode

Ayes: Chase, Henn, Kellogg, Robertson, Ode

Noes: None

Absent: Zhang

**Design Review &
Fence Design Review
157 Ronada Avenue**

Ms. Maria Canizales is requesting design review and fence design review to make various front yard and right (east) side yard improvements, including: the construction of a new 3'6" high wrought iron guardrail and access gate atop a new concrete retaining wall; with new stairs; and construct a new ornamental metal arbor at the front entry. The application also seeks retroactive approval for the construction of a solid wood fence with a maximum height of approximately 6'2" along the right side (west) property line; and make window and door modifications.

Written notice was provided to neighbors. **Three affirmative, one negative response forms** were received. **Correspondence** was received from: Brian Pometta

Public testimony was received from:

Vicki Diaz, the applicant's daughter, stated that her mother's multi-unit property has been undergoing repairs from damage sustained in a 2011 fire. In particular, she noted that the 6'2" fence was existing at the time of her mother's purchase of the property in 2006, the proposed wrought iron guardrail is intended as an aesthetic improvement to the guardrail required for safety around the property's utility meters and the proposed wrought iron ornamental arbor is intended to better identify the Ronada Avenue entry into the property and compliment the arched gateway on the Moraga Avenue entry.

Arleta Chang, Project Architect, described the configuration of the cluster of homes centered around the courtyard comprising this "hidden gem" of a property, the desirability of identifying the property's Ronada entry to architecturally compliment the Moraga Avenue entry, the intention to aesthetically improve the required guardrail around the property's utility meters by replacing the existing guardrail with a more attractive, better proportioned railing and to make slight window changes to improve interior lighting and comply with building code regulations.

Charles Hall, representing Robert Richardson of 150 Moraga Avenue, requested that a gate be reinstalled in the 6'2" wood fence so as to allow Mr. Richardson access from his home to the street via the applicant's property. Mr. Hall stated that originally this fence had a gate providing such access, but this gate was removed by the property's previous owner. He urged that this gate be reinstalled for fire safety reasons, stating that without the gate, the only access to the street from the rear portion of Mr. Richardson's home is through his home. Mr. Hall was unaware if Mr. Richardson had easement rights through the applicant's property.

Vicki Diaz responded to Mr. Hall's statements by reiterating that the fence did not have a gate at the time of her mother's purchase of the property, there is no easement on file and her mother is not interested in having such a gate out of security concerns/protections for her tenants against potential trespassers.

The Commission supported application approval, agreeing that the improvements aesthetically improve a beautiful and historically unique property and that the slight 2 inch excess in height of the existing fence is acceptable given that the fence is located along a slope resulting in slight variations in height. The Commission agreed that the access gate issue is a private, civil matter that should have been addressed by Mr. Richardson at the time of its removal by the property's prior owner. The Commission added that typically, circulation onto private property is not allowed unless both property owners agree or there is an established easement right granting such access.

Resolution 45-DR-12

WHEREAS, Ms. Maria Canizales is requesting permission to make various front yard and right (east) side yard improvements, including: the construction of a new 3'6" high wrought iron guardrail and access gate atop a new concrete retaining wall; with new stairs; and construct a new ornamental metal arbor at the front entry; as well as retroactive approval for the construction of a solid wood fence with a maximum height of approximately 6'2" along the right side (west) property line; and make window and door modifications located at 157 Ronada Avenue, Piedmont, California, which construction requires design review; and

WHEREAS, after reviewing the application, plans and any and all testimony and documentation submitted in connection with such application, and after having visited subject property, the Piedmont Planning Commission finds that the project is categorically exempt under the California Environmental Quality Act, pursuant to Section

15301, Class 1(e) and the proposal conforms with the criteria and standards of Section 17.20.9 of the Piedmont City Code:

1. The exterior design elements (including but not limited to height, bulk, area openings, materials, arrangements of structures on the parcel, and concealment of mechanical and electrical equipment) are aesthetically pleasing as a whole and harmonious with existing and proposed neighborhood development. The project complies with Design Review Guidelines II-1, II-2, II-3(a), (b) & (d), II-7, II-7(a), IV-1, IV-1(b), IV-3, IV-3(a), V-1, V-2, V-5(a) & (c), V-7 and V-8. The slight 2 inch excess in fence height in some places is due to site slope conditions and this variation in height is acceptable and complies with the above cited Design Review Guidelines.
2. The design is appropriate, considering its effect on neighboring properties' existing views, privacy and access to direct and indirect light because there is no impact. The proposed windows will have no negative impact on neighbor privacy and the fence does not obstruct neighbor light. 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. Public safety is enhanced by the addition of a guardrail in front of the property's utility meters. 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. Canizales for construction at 157 Ronada 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. **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. **Windows.** One of the windows in the bedroom of Unit 1 shall be modified to meet Building Code egress requirements, subject to staff review and approval.

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

Moved by Robertson, Seconded by Henn

Ayes: Chase, Henn, Kellogg, Robertson, Ode

Noes: None

Absent: Zhang

**Conditional Use Permit
1345 Grand Avenue**

Mr. Jack MacAboy of Sylvan Learning Center is requesting a conditional use permit to continue to operate a tutoring and test preparation center at 1345 Grand Avenue (situs address is 1337 Grand Avenue). The Center has been in operation at this site since 1996.

The application proposes to continue to operate the Sylvan Learning Center on the second floor of a multi-tenant office building as follows:

Days & Hours of Operation: Monday-Thursday, 9:00 a.m. to 8:00 p.m.; Friday 9:00 a.m. to 6:00 p.m.; Saturday 9:00 a.m. to 3:00 p.m.; closed Sunday

Number of On-Site Parking Spaces: 25

Maximum Number of People Using the Business at One Time: 25

Types of Staff/Personnel: 1.5 management, 1 clerical, 9 teachers at peak hours

Written notice was provided to neighbors. **Two affirmative response forms** were received. **Correspondence** was received from: Gary Theut; Jennifer Colton

Neither the applicant nor a representative was present to discuss the application. There was no **public testimony**.

The Commission supported application approval, agreeing that the business provides a valuable service to Piedmont residents and students, no material changes in the existing use are proposed and there is adequate on-site parking to accommodate this use.

Resolution 12-CUP-12

WHEREAS, Mr. Jack MacAboy of Sylvan Learning Center is requesting a Conditional Use Permit to continue to operate a tutoring

and test preparation center at 1345 Grand Avenue (situated address is 1337 Grand Avenue) Piedmont, California, and;

WHEREAS, the Piedmont Planning Commission has reviewed the application, the staff report, and any and all other documentation and testimony submitted in connection with the application and has visited the 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 use is of substantial benefit to Piedmont residents. The Center has been in business for many years and has served more than 550 Piedmont students.
3. The use will be properly related to other land uses and transportation and service facilities in the vicinity. The use adjoins Grand Avenue which is main thoroughfare and is accessible by walking, bicycling and public transit. In addition, on-site parking is available for customers.
4. Under all the circumstances and conditions of the particular case, the use will not have a material adverse effect on the health or safety of persons residing or working in the vicinity. The use is purely a learning center.
5. The use will not be contrary to the standards established for the zone in which it is to be located. The Center is located in a Zone D commercial zone and the use is consistent with Zone D requirements.
6. The use will not contribute to a substantial increase in the amount of noise or traffic in the surrounding area. There is no material change in the way the business has operated over the last 16 years.
7. The use is compatible with the General Plan and will not adversely affect the character of the surrounding neighborhoods or tend to adversely affect the property values of homes in the surrounding neighborhoods. This facility is permitted under the General Plan for commercial use in the Grand Avenue district. The use is a well-selected enterprise that benefits the community and fits with the Plan.
8. Adequate provision for driveways to and from the property has been made; facilities for ingress and egress from secondary streets instead of arterials, where possible, have been made; provision for parking in compliance with this Chapter 17 has been made, together with sufficient agreements to enforce the carrying out of such plans as may be required by the Council. This is an existing commercial building with ample on-site parking for customers and employees and safe and effective ingress/egress.
9. The plans conform to all other laws and regulations of the City, provided, however, that the Council shall have the right to require front, rear and side yard setbacks greater than those otherwise provided in the laws and regulations of the City if the Council finds that such larger front, rear and side yard areas are necessary to provide for the

health, safety and general welfare of the residents of Piedmont in accordance with its zoning laws. There are no structural, signage or lighting changes being proposed to this business which has been in operation for 16 years.

RESOLVED, that in consideration of the findings and facts set forth above, the Piedmont Planning Commission recommends approval by the City Council of the application for a conditional use permit by Mr. MacAboy for property located at 1345 Grand Avenue (situated address is 1337 Grand Avenue), Piedmont, subject to the following conditions:

1. The term of the approval shall be 10 years
2. 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.

Moved by Kellogg, Seconded by Henn

Ayes: Chase, Henn, Kellogg, Robertson, Ode

Noes: None

Absent: Zhang

**Design Review &
Fence Design Review
44 Farragut Avenue**

Panama City Partners LLC (Mr. & Mrs. Marc Furstein) are requesting design review to make site modifications and improvements throughout the property, including: modifications to the previously approved landscaping in the rear and east side yards; additional exterior lighting throughout; construction of a new wall with gate and pillars between the front and east side yards; new and replacement paths, driveway and landscaping in the front yard; new seat wall at the front left corner of the property; and modifications to the existing front entry landing and steps. Applications relating to this property were previously approved by the Commission on June 13 and August 8, 2011.

Written notice was provided to neighbors. **Two affirmative response forms** were received. **Correspondence** was received from: Marc & Samantha Furstein

Public testimony was received from:

Bennett Christopherson, Project Architect, and Jeff George, Project Landscape Architect, described the minor revisions proposed for the front portion of the property to provide better privacy, security and access to the swimming pool area as well as highlight the property's front entry.

The Commission supported application approval, agreeing that the proposed changes are beautifully detailed, well integrated and commensurate with the overall elegance of the property.

Resolution 51-DR-12

WHEREAS, Panama City Partners LLC (Mr. & Mrs. Marc Furstein) are requesting permission to make site modifications and improvements throughout the property, including: modifications to the previously approved landscaping in the rear and east side yards; additional exterior lighting throughout; construction of a new wall with gate and pillars between the front and east side yards; new and replacement paths, driveway and landscaping in the front yard; new seat wall at the front left corner of the property; and modifications to the existing front entry landing and steps located at 44 Farragut 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 V-1, V-2, V-3 and V-5.
2. The design is appropriate, considering its effect on neighboring properties' existing views, privacy and access to direct and indirect light because there is no impact due to the location of the proposed changes. The project complies with Design Review Guidelines II-1 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 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 Panama City Partners LLC (Mr. & Mrs. Marc Furstein) for construction at 44 Farragut Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following condition:

- Compliance with the conditions of approval specified as part of the prior approvals on the residence at 44 Farragut Avenue under Design Review Applications #11-0143 and #11-0202 shall extend to this application

RESOLVED FURTHER, that the approval of the Planning Commission/City Council and any conditions of that approval shall not extend to any particulars set forth in the documents submitted for the project which are inconsistent with or in violation of any applicable law, including but not limited to Chapters 5 and 17 of the City Code, nor does the approval extend to matters not set forth, or inadequately represented, in submitted documents (whether or not consistent with applicable law). The City reserves the right to require compliance with

applicable laws and to attach conditions after initial approval is given, if noncompliance is discovered or additional conditions are considered necessary and appropriate in light of Commission/Council findings.

Moved by Henn, Seconded by Kellogg

Ayes: Chase, Henn, Kellogg, Robertson, Ode

Noes: None

Absent: Zhang

The Commission recessed for dinner at 6:45 p.m. and reconvened at 7:20 p.m.

**Conditional Use Permit
5201 Park Boulevard**

Pastor Paul Aldrich of Zion Lutheran Church and School is requesting a conditional use permit to continue to operate a church and parochial school at 5201 Park Boulevard.

The application proposes the following:

Days & Hours of Operation:

Church: 8:00 a.m. to 12:30 p.m. on Sunday; also evening meetings.

School: Monday-Friday: 8:20 a.m. to 3:10 p.m.; Child Care: 7:00 to 8:00 a.m. & 3:10 to 6:00 p.m.;

Organizations: weekends and evenings as needed

Number of On-Site Parking: 75; 12 for staff & 63 for visitors

Types of Staff/Personnel: Full-time pastor (1); youth minister (1), parish administrator (1); teachers (7); school administrative assistants (2); Part-time: 1 Organist, 3 teachers, 5 child-care workers

Written notice was provided to neighbors. **Two affirmative response forms** were received. **Correspondence** was received from: Nancy & Robert Bishop; Betty & Brad Bredemann; Suzanne Layden; Dennis Markus; Richard & Rebecca Nolan;

Public testimony was received from:

Paul Aldrich stated that the church and school has been in operation in Piedmont for 60 years and overall for 130 years.

Nancy Keep, Finance Officer and School Administrator, submitted the most recent geotechnical report from geotechnical consultants Ninyo & Moore, dated April 5, 2012, stating that report submittals on a 6 month basis are required as a condition of the Church's prior CUP approval. She supported staff's proposed conditions of approval for permit renewal, requesting that instead of the 1-year time frame to complete drainage and retaining wall related requirements (Conditions 3 & 4), the Church be granted 18 months. She requested this 6 month extension in order to correspond with the Church's budgetary and loan process timetable as well as accommodate upcoming changes in membership on the Church's Board of Directors. She also noted that some of the drainage/retaining wall concerns cited by the City Engineer in his memo of April 5 may in fact not be from or on Church property.

John Wanger, City Engineer, referenced his memo in describing his concurrence with the findings and recommendations of Ninyo & Moore's November report and voicing his concern that a broken brick

retaining wall on the hillside could potentially slide onto Park Boulevard traffic lanes. He agreed with Ms. Keep's request for a 18 month time frame within which to install a top of slope drainage collection system (Condition 3) but given his concerns over the stability of the broken retaining wall, suggested that the stability of this wall be re-evaluated by Ninyo & Moore. If based upon this re-examination, Ninyo & Moore finds that the wall does not pose an imminent slippage threat, then an 18 month time frame for its removal would be acceptable; if not, then wall removal should occur within 12 months of CUP approval.

The Commission discussed the impact the City of Oakland's current roadside construction project along this portion of Park Boulevard could have on the Church's action to remove the broken retaining wall in terms of additional traffic lane closures and congestion. The City Planner responded that the Public Works Department would coordinate with the City of Oakland regarding the scheduling of wall removal to insure minimum traffic lane disruptions. The Commission also voiced concern over City liability and indemnification issues associated with the drainage and retaining wall matters. Therefore, the Commission requested staff to propose two additional CUP renewal conditions of approval prior to the City Council's May 7th consideration of the application, with said new conditions addressing: (1) traffic scheduling coordination with the City of Oakland re wall removal timing and submittal of a project construction management plan; and (2) City indemnification protections/insurance requirements. As to overall permit renewal, the Commission voiced support, agreeing that the Church and school has served the Piedmont community for decades and there are no material changes being proposed to its existing use or activities.

Resolution 54-CUP-12

WHEREAS, Pastor Paul Adrich of Zion Lutheran Church and School is requesting a Conditional Use Permit to continue to operate a church and parochial school at 5201 Park Boulevard, Piedmont, California, and;

WHEREAS, the Piedmont Planning Commission has reviewed the application, the staff report, and any and all other documentation and testimony submitted in connection with the application and has visited the 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 use is of benefit to Piedmont residents. For years it has provided a school, a church and a forum for community activities that are beneficial to the residents of Piedmont.
3. The use will be properly related to other land uses and transportation and service facilities in the vicinity. The use has a parking lot as well as being located near several bus lines. The use has operated successfully at this site for many years.

4. Under all the circumstances and conditions of the particular case, the use will not have a material adverse effect on the health or safety of persons residing or working in the vicinity. The use provides a welcoming, spiritual place for the community.
5. The use will not be contrary to the standards established for the zone in which it is to be located. There are other churches and schools located nearby in this zone. The use has been consistent with the neighborhood standards for many years.
6. The use will not contribute to a substantial increase in the amount of noise or traffic in the surrounding area. There is no change in the existing use.
7. The use is compatible with the General Plan and will not adversely affect the character of the surrounding neighborhoods or tend to adversely affect the property values of homes in the surrounding neighborhoods. The use enhances the surrounding area.
8. Adequate provision for driveways to and from the property has been made; facilities for ingress and egress from secondary streets instead of arterials, where possible, have been made; provision for parking in compliance with this Chapter 17 has been made, together with sufficient agreements to enforce the carrying out of such plans as may be required by the Council. The use has operated from this site for decades.
9. The plans conform to all other laws and regulations of the City, provided, however, that the Council shall have the right to require front, rear and side yard setbacks greater than those otherwise provided in the laws and regulations of the City if the Council finds that such larger front, rear and side yard areas are necessary to provide for the health, safety and general welfare of the residents of Piedmont in accordance with its zoning laws. There are no changes proposed for the existing use.

RESOLVED, that in consideration of the findings and facts set forth above, the Piedmont Planning Commission recommends approval by the City Council of the application for a conditional use permit by Pastor Aldrich for property located at 5201 Park Boulevard, Piedmont, subject to the following conditions:

1. **Term.** The term of the approval shall be 15 years;
2. **Six-Month Geotechnical Reports.** Over the course of the term of this conditional use permit, at intervals no longer than six months and at times coincident with significant slide activity, Zion Lutheran Church and School shall submit geological reports to the Public Works Department for review by the City Engineer addressing issues of slope stability, site safety and the ability of existing school buildings to withstand a major slope failure. In the event any of these geological reports indicate safety issue problems/concerns, the City Council has the authority to reconsider the Conditional Use Permit;
3. **Drainage.** Within eighteen months of the issuance of the Conditional Use Permit, the applicant shall be responsible for revising

the drainage system at the top of the slope between the buildings and Park Boulevard so as to eliminate the plastic drain lines that currently extend over the embankment. This will require the installation of a top of slope drainage collection system. Said system shall be extended towards the parking lot entrance and shall be connected to the existing storm drain system in Park Boulevard. Plans and calculations shall be submitted to the City for review and approval as part of a building permit application prior to constructing the improvements;

4. **Retaining Wall Removal.** Within eighteen months of the issuance of the Conditional Use Permit, the section of broken retaining wall on the slope adjacent to Park Boulevard shall be removed, with the understanding that a geotechnical report addressing the stability of this retaining wall shall be submitted within three months of conditional use permit approval. If the report recommends removal due to the instability of the wall, the wall shall be removed within one year. The removal shall be done under the observation of a soils engineer and the slope behind the wall shall be secured in such a way so that additional debris flows shall not occur from this location down-slope. Prior to removal, a letter report addressing how the section of wall will be removed and how the slope will be stabilized shall be submitted to the City for review and approval as part of the building permit review;

5. **Future Mitigations.** The City reserves the right to require whatever mitigation measures it feels at any point in time are necessary to protect the school's children;

6. **Encroachment Permit.** If an encroachment permit will be needed for any of the work associated with these conditions, the applicant shall be responsible for obtaining an encroachment permit from the appropriate jurisdiction;

7. **City Engineer/Consultant Cost Recovery.** The Property Owner shall make a cash deposit with the City in the amount of \$5,000 to be used to offset time and expenses of the City Engineer or a third party consultant relating to the review of the geotechnical reports required under conditions 2 through 5 above. If such cash deposit has been reduced to \$2,500 or less at any time, the Director of Public Works may require the Property Owner to deposit additional funds to cover any further estimated additional City Engineer or Consultant time and expenses;

8. **CEQA.** 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.

9. **Indemnification.** Staff, in consultation with the City Attorney and City Engineer, shall research issues related to City liability, insurance and indemnification requirements associated with proposed Conditions of Approval 3 & 4, herein, and prepare an

appropriate condition of approval addressing these issues for City Council consideration on May 7th.

10. **Construction Management.** Staff, in consultation with the City Attorney and City Engineer, shall address issues related to traffic control scheduling with the City of Oakland and a construction management plan, including a time schedule, relating to Condition 4's retaining wall removal requirement and prepare an appropriate condition of approval concerning these matters for City Council consideration on May 7th.

Moved by Robertson, Seconded by Kellogg

Ayes: Chase, Henn, Kellogg, Robertson, Ode

Noes: None

Absent: Zhang

**Fence Design Review
201 Crocker Avenue**

Mr. and Mrs. Srikant Misra are requesting fence design review to replace an existing brick wall with a new stucco wall with a maximum height of approximately 6'11" and an approximately 4'10" high wood entry gate at the right (north) side of the property along Lafayette Avenue.

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

Neither the applicant nor a representative was present to discuss the application. There was no **public testimony**.

The Commission supported application approval, agreeing that the height and placement of the new wall is essentially the same as the one it replaces, the change from brick to stucco creates a more consistent appearance with the exterior of the home and the style and architectural detailing of the new wall compliments the residence.

Resolution 56-DR-12

WHEREAS, Mr. and Mrs. Srikant Misra are requesting permission to replace an existing brick wall with a new stucco wall with a maximum height of approximately 6'11" and an approximately 4'10" high wood entry gate at the right (north) side of the property along Lafayette Avenue located at 201 Crocker Avenue, Piedmont, California, which construction requires design review; and

WHEREAS, after reviewing the application, plans and any and all testimony and documentation submitted in connection with such application, and after having visited subject property, the Piedmont Planning Commission finds that the 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 they match or are compatible with the style, materials and architectural style of the existing residence. The new wall has the same height and mass of the wall it is replacing. The project complies with Design Review Guidelines V-1, V-3, V-4 and V-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 new wall is the same size and mass as the wall it replaces; there is no material difference between the two. The project complies with Design Review Guidelines V-9 and V-11.

3. The safety of residents, pedestrians, and vehicle occupants and the free flow of vehicular traffic are not adversely affected, considering the circulation pattern, parking layout and points of ingress and egress. The property is a corner lot and the height of the new wall is appropriate for the scale of the property and reasonable to provide privacy to the rear yard. The project complies with Design Review Guidelines V-6, V-8, V-9, 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. Misra for construction at 201 Crocker Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City.

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

Moved by Kellogg, Seconded by Robertson

Ayes: Chase, Henn, Kellogg, Robertson, Ode

Noes: None

Absent: Zhang

**Design Review
140 La Salle Avenue**

Mr. Robert Williamson is requesting design review to construct a mid-level deck covering on the rear of the house with outdoor down lighting. A similar application was denied by the Commission on January 9, 2012.

Written notice was provided to neighbors. **Two affirmative, one negative response forms** were received. **Correspondence** was received from: Gordon Linden

Public testimony was received from:

Steve Swearengen, Project Architect, described the two design options (A & B) submitted for the deck covering in response to the January meeting, noting that under both options the exterior mounted TV, speakers, lights, gas lines, and fans would be removed and stating the applicant's strong preference for Option B:

Option A -- proposes an open wood trellis design attached to the existing stucco and metal guardrail by wooden posts.

Option B -- proposes a solid, slightly sloping shed roof attached to the existing stucco and metal guardrail by wooden posts, covered by an asphalt torchdown or copper roofing material, and features down lighting attached to the soffit. *(It was noted that there was a discrepancy in the submitted plans as to whether the proposed roof was wood torchdown or copper).*

Gordon Linden voiced concern over the applicant's use of the mid-level deck, noting frequent disturbances from loud and crowded parties held on the deck. He requested that use restrictions be imposed regarding deck usage, limiting the number of people which could be on the deck at any given time, the hours of use and a prohibition against the use of outdoor speakers.

The Commission agreed that the redesign options were responsive to Commission requests. Commissioners Robertson and Henn felt that both options were acceptable in terms of architectural compatibility with the residence, the absence of any significant impact on neighbor views and noting that Option B would be more functional/usable year-around and was the preferred choice of the applicant. The remaining Commissioners only supported approval of Option A, citing the following reasons: (1) the light, elegant design of the trellis was more in keeping with the home's architecture and with other decks in the neighborhood; (2) created less massing and shadowing impacts; and (3) eliminated the "visual" appearance and perception of a second story addition. The Commission discussed a third "hybrid" option of a partially covered roof but in the end the majority felt that such an option would appear tacked on and still create undesirable shadowing impacts. The Commission agreed that low-voltage, downward directed lighting could be added to Option A if the applicant so desired.

Resolution 58-DR-12(1)

WHEREAS, Mr. Robert Williamson is requesting permission to construct a mid-level deck covering on the rear of the house located at 140 La Salle 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 submitted Option A design 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 wood trellis structure is compatible in architectural style and materials with the existing residence. The project complies with Design Review Guidelines II-1, II-2, II-3 and II-3(a), (b) & (d).
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 on neighboring views of open space and greenery nor blockage of light to neighboring properties. The project complies with Design Review Guidelines II-6, II-6(a) through (c) and II-7.

3. The safety of residents, pedestrians, and vehicle occupants and the free flow of vehicular traffic are not adversely affected, considering the circulation pattern, parking layout and points of ingress and egress because there is no change in existing circulation patterns.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the Option A design review application of Mr. Williamson for construction at 140 La Salle Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

1. **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;

2. **Lighting.** The applicant is allowed to include downward-directed, low voltage lighting within the depth of the trellis structure, subject to the condition that there shall be no light spill beyond the applicant's property boundaries.

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 Ode

Ayes: Chase, Henn, Kellogg, Robertson, Ode

Noes: None

Absent: Zhang

Resolution 58-DR-12(2)

WHEREAS, Mr. Robert Williamson is requesting permission to construct a mid-level deck covering on the rear of the house with outdoor down lighting located at 140 La Salle 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) but the submitted Option B design 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 in terms of architectural style and materials, with the exception of the inconsistency in the submitted plans with regard to either a wood torchdown roof or copper roof. A torchdown roof is not consistent with the architectural style of the home. While a copper roof would be architecturally compatible with the existing home, the proposed roof design is not acceptable in terms of its massing and style. A solid roof over the deck would be similar to adding a second story addition. Even though the deck would not be completely enclosed as a livable or habitable space, it would visually appear as a solid, two-story addition to neighbors in all directions, both side and rear. Thereby, this would be a significant massive addition to the home. The project fails to comply with Design Review Guideline II-2 in terms of its adverse massing impacts on neighboring properties and with Guideline II-3 and II-3(a) in that a solid roof over an outside deck is unnecessary and provides an opportunity for a torchdown roofing material which is not consistent with the style of the existing home.
2. The design is not appropriate, considering its effect on neighboring properties' existing views, privacy and access to direct and indirect light because the solid roof option would obstruct some amount of neighbor view, would have a physical mass impact on adjoining neighbors which is easily viewable from their rear yards and living areas and is a less appealing option than the Alternate Option A design also submitted as part of this application. The project fails to comply with Design Review Guidelines II-2 and II-3(d).
3. The safety of residents, pedestrians, and vehicle occupants and the free flow of vehicular traffic are not adversely affected, considering the circulation pattern, parking layout and points of ingress and egress because there is no impact.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission denies, without prejudice, the Option B design review application of Mr. Williamson for construction at 140 La Salle Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City.

Moved by Kellogg, Seconded by Ode

Ayes: Chase, Kellogg, Ode

Noes: Henn, Robertson

Absent: Zhang

ADJOURNMENT

There being no further business, Chairman Chase adjourned the meeting at 9:05 p.m.