

PIEDMONT PLANNING COMMISSION

Regular Meeting Minutes for Monday, August 13, 2012

A Regular Session of the Piedmont Planning Commission was held August 13, 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 August 3, 2012.

CALL TO ORDER

Vice Chairman Zhang called the meeting to order at 5:05 p.m.

ROLL CALL

Present: Commissioners Michael Henn, Jim Kellogg, Melanie Robertson, Tom Zhang and Alternate Commissioner Susan Ode

Absent: Chairman Phillip Chase (excused)

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

City Council Liaison: Councilmember Robert McBain

CONSENT CALENDAR

There was no consent calendar.

PUBLIC FORUM

There were no speakers for the public forum.

APPROVAL OF MINUTES

Resolution 13-PL-12

RESOLVED, that the Planning Commission approves as submitted its meeting minutes of July 9, 2012.

Moved by Ode, Seconded by Kellogg

Ayes: Henn, Kellogg, Robertson, Zhang, Ode

Noes: None

Absent: Chase

REGULAR CALENDAR

The Commission considered the following items of regular business:

Design Review 331 St. James Drive

Mr. Robert Marshak and Ms. Judy Kelly are requesting retroactive design review approval for domed skylights installed on the front street facing roofline and the rear facing roofline of the house.

Written notice was provided to neighbors. **Four affirmative response forms** were received. **Correspondence** was received from: Judy Kelly; Cliff Shapiro; Naomi Feger; Judy Kelly & Bob Marshak

Public testimony was received from:

Judy Kelly apologized for failing to realize that City permission was required to install the new skylights when she roofed her home in February. She stressed that the new lights add much needed natural light to her closet and master bedroom areas, are not readily visible from the street because of their small size and are really only visible from the parking lot of the Corpus Christi Church. However, she noted her willingness to paint the flashing around the skylights to match the roof color, paint or remove the interior reflective material and rough up the surface of the plastic bubble all in an effort to reduce any potential reflectivity.

The Commission agreed that this new sun-tunnel, domed skylight product is far superior in quality and appearance to the old "bubble" skylights which the current code disallows. It felt that this new product is much more acceptable and should be permitted under the City's Design Review Guidelines. With regard to the current application, the Commission cited the small size of the skylights, the energy efficiency benefits such skylights provide, the fact that the skylights are not readily visible from the St. James streetscape, the high quality of this product and the fact that they impose no material impact on neighbors. The Commission supported painting the exterior flashing around the skylight the same color of the roof to further minimize any visual impact. However, it felt it unnecessary to remove or paint any of the interior reflective material, believing that the skylights do not have any reflective impact.

Resolution 146-DR-12

WHEREAS, Mr. Robert Marshak and Ms. Judy Kelly are requesting retroactive permission for the installation of domed skylights installed on the front street facing roofline and the rear facing roofline of the house located at 331 St. James Drive, 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 because of their small size and the relative non-visibility of these units from the street.
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 and all identified neighboring input is supportive of the project.
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 circulation patterns.
4. The project complies with Design Review Guidelines I-1 and I-2.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review application of Mr. Marshak and Ms. Kelly for construction at 331 St. James Drive, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

1. 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. The sheet metal flashing around the skylights shall be painted to match the color of the roof.

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 Robertson

Ayes: Henn, Kellogg, Robertson, Zhang, Ode

Noes: None

Absent: Chase

**Second Unit Permit
280 Mountain Avenue**

Ms. Paula Champion-Braig is requesting an Exempt Second Unit Permit to legalize a second unit believed to have been constructed prior to 1930. Multiple sources within City records, supplemented by materials submitted by the applicant, provide evidence that since at least 1911 there have been two separate residences located on the property at 280 Mountain Avenue -- one at the rear of the property and one at the front. The older (1907) rear house is a 2-story, 2-bedroom craftsman style residence. The newer (1909) front house is a 2-story, 5-bedroom craftsman residence. Both homes were designed by the Milwain Brothers for the Frank Howe family. Submitted evidence indicates that the rear residence was used as a second unit early in the first quarter of the 20th century by prior owners. The current owners rented the house to a family member for years and since 2009 have rented the unit to a non-family tenant.

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

Public testimony was received from:

Paula Champion-Braig summarized the long history of the second unit's occupation, including serving a brief time as a schoolhouse. She stated her belief that the prior owner failed to legalize (grandfather) the unit in 1988 because this owner was experiencing severe financial and personal problems at that time. She noted that she has rented the unit for years, annually paying the City's rental tax.

The Commission acknowledged the long paper trail indicating that this cottage existed and has been occupied as a second unit before 1930 and, therefore, qualifies for a second unit permit exemption.

Resolution 177-SU-12

WHEREAS, Ms. Paula Champion-Braig is requesting an Exempt Second Unit Permit to legalize a second unit believed to have been constructed prior to 1930 located at 280 Mountain Avenue, Piedmont, California, which construction requires design review; and

WHEREAS, after reviewing the application, plans and any and all testimony and documentation submitted in connection with such application, and after having visited subject property, the Piedmont Planning Commission finds that the project is categorically exempt under the California Environmental Quality Act, pursuant to Section 15301, Class 1(e) and the proposal conforms with the criteria and standards of Section 17.40.5 of the Piedmont City Code, finding:

- there is sufficient, reliable evidence in support of the finding that this property has had a second unit prior to 1930, including the documents listed in the August 13, 2012, staff report (e.g. at least six City and County records and materials submitted by the applicant, a 1911 rental agreement and 1920 census)

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves an Exempt Second Unit Permit application of Ms. Champion-Braig for an existing second unit at 280 Mountain Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following condition:

- 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 Ode, Seconded by Robertson

Ayes: Henn, Kellogg, Robertson, Zhang, Ode

Noes: None
Absent: Chase

**Fence Design Review
460 Mountain Avenue**

Mr. Joseph Waxman and Ms. Susan Goldsmith are requesting fence design review for retroactive approval of a deer fence within the front 20 ft. front yard setback and to install a new decorative steel entry gate at the front of the property along Mountain Avenue.

Written notice was provided to neighbors. **Two affirmative response forms** were received. **Correspondence** was received from: Scott Shepherd; Josephine Shuman

Public testimony was received from:

John Rogers, Project Contractor, described the features of the proposed, hand-forged wrought iron gate intended to create an open, welcoming entry into the property while duplicating the architectural style of the residence. He was not involved with the deer fence installation.

Susan Goldsmith stated that her property is bordered by three streets and her garden is a cherished, important aspect of her property. Because all other efforts to keep deer from destroying her garden have failed, she recently installed the deer fence out of desperation. The addition of the gate is needed to close off this last avenue of entry for the deer. She stressed that the black vinyl fence is intended to blend into the surrounding and a thick grove of camellia bushes inside the fence will grow through the fence to further camouflage its appearance. She emphasized that she doesn't want a barrier fence enclosing her property, hence the choice of a vinyl screen that will be screened by vegetation.

The Commission agreed that the design, detailing and quality of the proposed wrought iron gate was beautiful and appropriate for the home's entrance. However, the Commission felt that the deer fence was incompatible with the home's architecture, temporary in appearance, contrary to the City's Design Review Guidelines and inappropriate for such a visually prominent location. The Commission sympathized with Ms. Goldsmith's deer problems, but felt that better solutions are available for protecting her garden. Suggestions ranged from: (i) installing an interior fence around her roses and landscaping the exterior areas with deer resistant plants; (ii) installing a wrought iron or more substantial, elegant fence posts and substituting the black vinyl material with black steel mesh to create a more visually transparent appearance; (iii) building a wood framed fence--wood fence posts, with caps, and plastic inlay; or (iv) mimicking the design of existing fencing at the northeast corner of the property.

Joseph Waxman stated that in the late 1990's, he received Commission approval to build a 6 ft. high wall enclosing his property but decided against walling off his garden. He noted concern that more substantial fence posts or piers may not be possible given potential damage to adjacent oak and redwood tree roots. He felt that the proposed solution was the best, least intrusive option for protecting his property against deer damage.

While the Commission agreed that it could not approve the deer fence as currently constructed, it agreed to allow the applicants to keep this fence in place to protect the garden while a new fencing design and application is prepared and submitted for approval.

Resolution 186-DR-12

WHEREAS, Mr. Joseph Waxman and Ms. Susan Goldsmith are requesting approval to install a new decorative steel entry gate at the front of the property along Mountain Avenue located at 460 Mountain Avenue, Piedmont, California, which construction requires design review; and

WHEREAS, after reviewing the application, plans and any and all testimony and documentation submitted in connection with such application, and after having visited subject property, the Piedmont Planning Commission finds that the project is categorically exempt under the California Environmental Quality Act, pursuant to Section 15301, Class 1(e) and the proposal conforms with the criteria and standards of Section 17.20.9 of the Piedmont City Code:

1. The exterior design elements are aesthetically pleasing as a whole and harmonious with existing and proposed neighborhood development and the existing style and design of the residence. The quality of the design, detailing and materials are correct in scale and proportion with the existing stucco entry piers and will add a positive announcement of the front entrance to the property.
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 improvements are in scale with adjoining properties in terms of gates and fences.
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 property circulation patterns. The proposed improvement will provide a sense of safety and a prominence of entrance to the home.
4. The proposed project complies with Design Review Guidelines V-1, v-2, V-3, V-5, V-5(a) & (b) and V-6.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review application of Mr. Waxman and Ms. Goldsmith relating to the proposed entry gate at 460 Mountain Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

1. The approved plans are those submitted on and dated July 31 and August 1, 2012, with respect to only the wrought iron entry gate, after neighbors were notified of the project and the plans were available for public review;
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.

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

Moved by Kellogg, Seconded by Henn

Ayes: Henn, Kellogg, Robertson, Zhang, Ode

Noes: None

Absent: Chase

Resolution 186(1)-DR-12

WHEREAS, Mr. Joseph Waxman and Ms. Susan Goldsmith are requesting retroactive approval for a deer fence within the front 20 ft. front yard setback along Mountain Avenue located at 460 Mountain Avenue, Piedmont, California, which construction requires design review; and

WHEREAS, after reviewing the application, plans and any and all testimony and documentation submitted in connection with such application, and after having visited subject property, the Piedmont Planning Commission finds that the project is categorically exempt under the California Environmental Quality Act, pursuant to Section 15301, Class 1(e) but the proposal does not conform with the criteria and standards of Section 17.20.9 of the Piedmont City Code:

1. The fence configuration in its aesthetics, its architectural design, materials and detailing are not consistent with the quality of front yard fences in the neighborhood nor with the architectural style and quality of the residence. The fence does not comply with the goals of the Design Review Guidelines relative to front yard fence construction.
2. The design is not appropriate considering its effect on neighboring properties' existing views, privacy and access to direct and indirect light. The Design Review Guidelines direct that front yard fences shall be given special consideration in terms of materials, quality and detailing when they are a visual prominence in the neighborhood. Because the fence is both visible from Dudley and Mountain Avenues, it is more visually prominent than any other property along Mountain Avenue.

3. The fence needs to be modified so as to create more architectural quality with the residence, be better integrated with the property's planting areas and more transparent in appearance. Said fence can exceed 4 ft. in height and need not be outside of the front yard setback.
4. The project fails to comply with Design Review Guidelines V-1, V-2, V-3, V-5, V-5(a) & (b) and V-6.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission denies, without prejudice, the design review application of Mr. Waxman and Ms. Goldsmith requesting retroactive approval of a deer fence at 460 Mountain Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City.

RESOLVED FURTHER, that staff is authorized to allow the existing fence to remain while a new fencing design and application is prepared and submitted for Commission consideration.

Moved by Kellogg, Seconded by Henn

Ayes: Henn, Kellogg, Robertson, Zhang, Ode

Noes: None

Absent: Chase

**Design Review
118 Greenbank Avenue**

Mr. Lorenzo Frediani is requesting design review to remodel and enlarge the residence by creating habitable space on the basement level and constructing an approximately 433 sq. ft. master bedroom and bathroom single-story addition at the rear. The application also proposes to make the following improvements: construct an approximately 74 sq. ft. kitchen expansion; enlarge the existing non-conforming garage; construct a new rear and right side yard deck and stairs; enlarge the existing driveway; make various hardscape improvements including retaining walls and walkways throughout the property; construct a new entry porch awning; install a new skylight tube; make window and door modifications; add exterior lighting; and make other interior improvements including the addition of two bedrooms.

Written notice was provided to neighbors. **Five affirmative, four negative responses forms** were received. **Correspondence** was received from: Colleen Vetter; Hassan & Nahid Javadi-Tabrizi; Nahid Javadi-Tabrizi;

Public testimony was received from:

Daniel Ramirez and Lorenzo Frediani, Project Partners, explained their experience in purchasing and rehabbing distressed properties for resale, emphasizing their commitment to minimize impacts on neighbors while creating improved residences consistent with neighborhood standards and family living. They also voiced their willingness to make modifications to the proposed design to accommodate Commission requests regarding consistent overhang depths, minimizing building heights and increasing the separation distance from the left side neighbor.

Nahid Javadi opposed the project, citing concerns over loss of property value, sky view and sunlight. She stated that currently she rents out her

property at 116 Greenbank but intends to reoccupy the home in approximately two years. She noted that her tenant has requested that if the applicant's proposal is approved, his rent be decreased or he will vacate the premises. Ms. Javadi voiced her support for a second-story addition as an alternative option for expanding the home's living space.

Jennie Lippincott urged project approval, stressing that this long-neglected and abandoned property has been an eyesore in the neighborhood for years. She stressed that transforming this property into a family residence will improve the property values of the entire neighborhood, adding that single-level residences are in short supply in Piedmont and provide an important housing need for seniors and families with small children.

The Commission supported the design in concept, agreeing that the existing property is in desperate need of upgrading and the proposed design is attractive and appropriate in size and scale with the lot and adjacent properties. However, the Commission discussed several options to reduce the impact on Ms. Javadi's property such as lowering the height, stepping down the addition in a split-level fashion, flipping the addition to the other side and the placement of the addition in relation to the left side property line be pulled back (8 to 12 inches) to minimize adverse impacts on this left side neighbor's feeling of openness and receipt of sunlight as well as enable the integrity of the home's overhang to be maintained. It was noted that this pull back would beneficially break up the home's massing, create more facade variation and lower the roof height as well as allow for the planting of a dense, tall vegetation screen between the two properties. Because this relocation would affect the location of the stairs and alignment/height of the roof, the Commission preferred that this revised design be submitted for Commission review rather than handled at staff level.

Resolution 192-DR-12

WHEREAS, Mr. Lorenzo Frediani is requesting permission to remodel and enlarge the residence by creating habitable space on the basement level and constructing an approximately 433 sq. ft. master bedroom and bathroom single-story addition at the rear. The application also proposes to make the following improvements: construct an approximately 74 sq. ft. kitchen expansion; enlarge the existing non-conforming garage; construct a new rear and right side yard deck and stairs; enlarge the existing driveway; make various hardscape improvements including retaining walls and walkways throughout the property; construct a new entry porch awning; install a new skylight tube; make window and door modifications; add exterior lighting; and make other interior improvements including the addition of two bedrooms located at 118 Greenbank Avenue, Piedmont, California, which construction requires design review; and

WHEREAS, after reviewing the application, plans and any and all testimony and documentation submitted in connection with such application, and after having visited subject property, the Piedmont Planning Commission finds that the project is categorically exempt under the California Environmental Quality Act, pursuant to Section 15301, Class 1(e) but the proposal does not conform with the criteria and standards of Section 17.20.9 of the Piedmont City Code:

- Although the exterior design elements are aesthetically pleasing as a whole they do create a negative impact on the neighboring property to the left in terms of view and light. Therefore, the project fails to comply with Design Review Guidelines II-6 and II-7.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission denies, without prejudice, the design review application of Mr. Frediani for construction at 118 Greenbank Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City.

Moved by Robertson, Seconded by Henn

Ayes: Henn, Kellogg, Robertson, Zhang, Ode

Noes: None

Absent: Chase

The Commission recessed for dinner at 7:20 p.m. and reconvened at 7:50 p.m.

**Variance and
Design Review
102 Pacific Avenue**

Mr. and Mrs. Langxing Pan are requesting variance and design review to modify the main (front) residential structure by demolishing the rear deck cover and stair; enlarging the upper unit by 93 sq. ft. through an addition at the southwest corner, a partial enclosure of the rear roof deck, and the full enclosure of a triangular alcove on the east facade; changing the design, height and material of the rear roof; replacing the shingle siding and rear deck guardrail; making window, door and skylight modifications; adding exterior lighting; and making various changes to the interior. The requested variance is from Section 17.12.7 to allow the eave of the new hip roof to extend to within 2'4" of the left side property line in lieu of the code required minimum of a 4 ft. side yard setback.

A previous application to make modifications to the front and rear residential structures was partially approved and partially denied by the Commission on October 12, 2009.

Written notice was provided to neighbors. **One negative response form** was received. **Correspondence** was received from: Sheila Gallagher

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

Public testimony was received from:

Langxing Pan reviewed the improvements made to this 1906 property since his purchase in 2002, noting that the proposed redesign to the rear portion of the front house reflects Commission requests of October 2009.

Mark Ratcliffe urged project approval, noting that construction on this property has been on-going for years and it needs to come to an end.

Sheila Gallagher referenced her letter in voicing strong opposition to the proposed upper story addition, citing concerns over loss of light and

privacy because of the addition's close proximity to her home. She submitted photographs indicating the loss of view she will suffer.

The Commission clarified inconsistencies in the submitted drawings with the applicant and agreed that overall the revised design is responsive to the Commission's requests of 2009. However, given the already significant impact of the residence on the Gallagher property, the Commission requested that the proposed addition be pulled back so that Ms. Gallagher's remaining portion of sky view can be preserved. The Commission acknowledged that the proposed new windows on the second floor dining room wall do not create a privacy intrusion because of their height.

Resolution 194-V/DR-12

WHEREAS, Mr. and Mrs. Langxing Pan are requesting permission to modify the main (front) residential structure by demolishing the rear deck cover and stair; enlarging the upper unit by 93 sq. ft. through an addition at the southwest corner, a partial enclosure of the rear roof deck, and the full enclosure of a triangular alcove on the east facade; changing the design, height and material of the rear roof; replacing the shingle siding and rear deck guardrail; making window, door and skylight modifications; adding exterior lighting; and making various changes to the interior located at 102 Pacific Avenue, Piedmont, California, which construction requires variance and design review; and

WHEREAS, a variance from the requirements of Chapter 17 of the Piedmont City Code is necessary in order to construct within the left (east) side yard setback; and

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

1. 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 topography of the lot and the size and location of the existing house on the lot. Because of these circumstances, strictly applying the terms of this chapter would keep the property from being used in the same manner as other properties in the zone which conform to the zoning requirements.
3. The variance is compatible with the immediately surrounding neighborhood and the public welfare because allowing the addition's roof overhang to extend into the setback preserves the architectural quality and building lines of the existing house with only minimal impact on adjacent properties.
4. Accomplishing the improvement without a variance would cause unreasonable hardship in planning, design, or construction because it would be impossible for new construction to preserve the architectural continuity of the existing house's building lines and comply with the City's Design Review Guidelines without variance.

5. As conditioned, the proposed improvements conform with the criteria and standards of Section 17.20.9 of the Piedmont City Code.
6. The exterior design elements are aesthetically pleasing as a whole and harmonious with existing and proposed neighborhood development. 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 losses of ambient and reflected light. The exterior design elements provide an unified roof line, consistency in window appearance and improve the overall appearance of the structure. The height, bulk, area openings, breaks in the façade, line and pitch of the roof, materials, arrangements of structures on the parcel and concealment of mechanical and electrical equipment have been done in a way that complies with the City's Design Review Guidelines.
7. As conditioned, the proposed upper level addition/expansion has been designed in a way that reasonably minimizes view and light impacts on neighboring properties because the addition will not be projecting out further than existing.
8. The size and height of the addition is commensurate with the size of the lot and is in keeping with the existing neighborhood development pattern. The proposed additions fit within the context of the existing structure.
9. 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.
10. The project complies with Design Review Guidelines II-1, II-2, II-3(a), (b), (c) & (d), II-4, II-5, II-5(a), II-6, II-6(a) through (c), II-7 and II-7(a).

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the variance and design review application of Mr. and Mrs. Pan for proposed construction at 102 Pacific Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

1. **Exterior Light Fixtures.** The new exterior light fixtures shall be downward directed with an opaque or translucent shade the completely covers the light bulb.
2. **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.

3. **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 Home;
- 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. The Director of Public Works has the option to refer the application to the Planning Commission for public review.

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

5. **CEQA Agreement.** The Applicant shall, pursuant to a form of agreement prepared by the City Attorney and executed by the Applicant, defend, at the Applicant's sole expense, indemnify and hold harmless the City of Piedmont, its elected and appointed officials, agents, officers and employees from and against any claim, demand,

loss, liability, action or proceeding relating to, resulting from, or in connection with any determination, whether through its Planning Commission, City Council, City Staff, or otherwise, regarding applicability of the California Environmental Quality Act to the Applicant's Project, including but not limited to any determination that a Categorical Exemption applies or that an Initial Study, a Negative Declaration or an Environmental Impact Report is or is not required for the Project.

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. Addition Wall. Referencing Sheet 6 of the submitted plans, the southwest corner shall be pulled back to where it currently exists on Sheet 5. The wall shall be straight in a northerly direction until it intersects with the wall between the den and master bedroom. Said modification shall be subject to staff review and approval.

8. Roof Overhang. Referencing Sheet 9 of the submitted plans, the roof overhang above the stairway at the upper level shall be 9 inches -- the same as shown on the opposite side of the roof. Said modification shall be subject to staff review and approval.

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

Moved by Robertson, Seconded by Henn

Ayes: Henn, Kellogg, Robertson, Ode

Noes: None

Recused: Zhang

Absent: Chase

**Conditional Use Permit
1345 Grand Avenue**

Dr. Valverde-Salas and Debra Turner, on behalf of Piedmont Primary Care, are requesting a conditional use permit to operate a new primary care medical office in Suite 103 at 1345 Grand Avenue. The application proposes the following:

Days & Hours of Operation: Monday-Friday, 8:00 a.m. to 7 p.m.;
Saturday 9 a.m. to 3:00 p.m.

On-Site Parking: 34 on-site parking spaces for both staff and clients off Linda Avenue. There are 7 dedicated spaces for Torrey Pines Bank off the Sunnyside Avenue entrance.

Maximum Number of People Using Business at One Time: 6 employees; 6-8 clients with appointments;

Types of Personnel: 2 Medical Doctor/Nurse Practitioner; 2 Receptionists; 2 Medical Assistants

Written notice was provided to neighbors. **Three affirmative response forms** were received. **Correspondence** was received from: Vicky Valverde-Salas & Debra Turner

Public testimony was received from:

David Bowie, Attorney representing the applicant, reviewed the ample parking on-site available for the proposed use, requested a 10 year CUP term, stated that no emergency vehicles will service the use and requested that the above *days & hours of operation* be granted for future flexibility even though the applicants are initially intending the following business hours: Monday & Thursday, 8 a.m. to 7 p.m.; Tuesday, Wednesday & Friday, 8 a.m. to 5:30 p.m. and Saturday, 8 a.m. to 2 p.m.

Patrick Ellwood, Building Owner, responded to Commission questions regarding parking lot space allocation and use, noting that 7 parking spaces have been allocated for this use. He added that the proposed office space has been vacant for two years.

The Commission supported application approval, noting that the submitted parking study indicates ample parking for the proposed use, the use is compatible with other "healing" services provided at this commercial building site and the proposed use offers another medical care option to Piedmont residents. The Commission preferred a 5 year CUP term since this is a new use and also supported approval of the days & hours of operation cited by Mr. Bowie.

Resolution 198-CUP-12

WHEREAS, Dr. Valverde-Salas and Debra Turner on behalf of Piedmont Primary Care are requesting a Conditional Use Permit to operate a primary care medical office at 1345 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 use is of benefit to Piedmont residents in that this will be the first medical service facility within the City available to provide primary care to all residents and the neighborhood.

2. The use will be properly related to other land uses and transportation and service facilities in the vicinity. The proposed use is located in an existing commercial office building on Grand Avenue. This building is located near public transportation and has its own parking lot with spaces allocated for this use. The hours of operation of this proposed use are consistent with the range of hours of other businesses in this commercial district.

3. 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. There is no material difference in terms of safety or circulation from other businesses at this site. All operations of this use will comply with proper state regulations for management of waste and deliveries. The parking lot entrance on Linda Avenue is adequate to provide services necessary to maintain this medical facility and use.

4. The use will not be contrary to the standards established for the zone in which it is to be located. The use is located within Zone D and is a permitted use within this zone. The use is harmonious and in character with other uses in the building and neighborhood.

5. The use will not contribute to a substantial increase in the amount of noise or traffic in the surrounding area. The use is located in an existing office building and is compatible with other business operations within this building. The hours of operation are similar to other uses at the site and the use will have no material impact on area traffic flow, parking or pedestrian safety or convenience as indicated by the submitted analysis.

6. 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 proposed use is consistent with the General Plan in that the medical clinic will support Piedmont residents by providing conveniently located medical care. The use is located in Zone D and is well integrated with other commercial uses and activities in this zone.

7. 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 is located in an existing commercial building with adequate parking within this facility to accommodate the building's businesses.

8. 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. The use is located in an existing commercial building in compliance with the City's zoning code and no changes are proposed to this building.

9. The project is categorically exempt under the California Environmental Quality Act, pursuant to Section 15301, Class 1(e)

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 Dr. Valverde-Salas and Debra Turner for property located at 1345 Grand Avenue, Piedmont, subject to the following conditions:

1. The term of the approval shall be 5 years.
2. The approved application and plans are those submitted on July 12, 16, 26 and 30, 2012, with additional information submitted on August 2, 2012, after neighbors were notified of the project and the plans were available for public review;
3. 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.
4. The days and hours of operation: Monday-Friday, 8 a.m. to 7 p.m.; Saturday, 9 to 3 p.m.
Moved by Kellogg, Seconded by Robertson
Ayes: Henn, Kellogg, Robertson, Zhang, Ode
Noes: None
Absent: Chase

**Variance and
Design Review
22 Mesa Avenue**

Mr. and Mrs. Drew Schreiber are requesting variance and design review to make various front and rear yard improvements to the site, including: modifications to an existing front entry porch and stairs; new railing and retaining walls; the demolition of an existing deck; construction of a new rear deck and stairs; roof, window and door modifications; demolition and replacement of an existing non-conforming 3-car carport with a new conforming 2-car garage; construction of a new trash enclosure and planter boxes; and various hardscape and landscape improvements. The requested variances are from: (1) Section 17.10.6 to allow the entry stairs to extend to the front property line in lieu of the code required minimum of a 20 ft. front yard setback; (2) Section 17.10.7 to allow the new garage overhang to extend to within 6 in. of the right (south) property line in lieu of the code required minimum of a 4 ft. side yard setback; and (3) Section 17.10.8 to allow the new garage overhang to extend to within 7 in. of the rear property line in lieu of the code required minimum of a 4 ft. rear yard setback.

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

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

Public testimony was received from:

Drew Schreiber summarized his renovation goals for his newly purchased home, noting in particular efforts to make the home more welcoming, modern and architecturally consistent.

Theresa Tamley, Project Architect, described the proposed improvements intended to improve the home's curb-appeal, functionality and garage ingress/egress.

Darren Bonnington, Project Contractor, described the efforts to be taken to minimize construction-related impacts on neighbors.

The Commission supported application approval, agreeing that the improvements are beautifully designed and the variance is justified to provide workable ingress/egress to the garage.

Resolution 201-V-12

WHEREAS, Mr. and Mrs. Drew Schreiber are requesting permission to make various front and rear yard improvements to the site, including: modifications to an existing front entry porch and stairs; new railing and retaining walls; the demolition of an existing deck; construction of a new rear deck and stairs; roof, window and door modifications; demolition and replacement of an existing non-conforming 3-car carport with a new conforming 2-car garage; construction of a new trash enclosure and planter boxes; and various hardscape and landscape improvements located at 22 Mesa Avenue, Piedmont, California, which construction requires variance and design review; and

WHEREAS, variances from the requirements of Chapter 17 of the Piedmont City Code are necessary in order to construct within the front (west), right (north) and left (south) 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 (i) the existing house is essentially located right at the 20 ft. front setback dimension so any entry stairs to this residence by necessity have to be located within the setback and (ii) the garage is located within the rear and side yard setbacks and this is the only logical place on the lot for this structure given the driveway's location. Because of these circumstances, strictly applying the terms of this chapter would keep the property from being used in the same manner as other properties in the zone which conform to the zoning requirements.

3. The variances are compatible with the immediately surrounding neighborhood and the public welfare because the proposed improvements enhance the home's aesthetics and functionality. In addition, it improves the usability of the property's off-street parking which also benefits the neighborhood.
4. Accomplishing the improvement without variance would cause unreasonable hardship in planning, design, or construction because without variance, it would be impossible to access the home and garage.
5. The project conforms with the criteria and standards of Section 17.20.9 of the Piedmont City Code.
6. The exterior design elements are aesthetically pleasing as a whole and harmonious with existing and proposed neighborhood development. These elements include the new fenestration, the new entry stairs, the consistency of the architectural style, the height, bulk, area openings, materials and arrangement of structures on the parcel.
7. The design is appropriate, considering its effect on neighboring properties' existing views, privacy and access to direct and indirect light because there is minimal impact. The reduction in size of the garage will improve the light and views of the rear neighbor. The reduction in mass of the front porch will improve the streetscape.
8. The safety of residents, pedestrians, and vehicle occupants and the free flow of vehicular traffic are not adversely affected, considering the circulation pattern, parking layout and points of ingress and egress. The garage will become much more accessible and the front stairs will be safer.
9. The project complies with Design Review Guidelines II-1, II-2, II-3(a) through (c), II-4, II-5, II-6, II-6(a) through (c), II-7, II-7(a), III-1, III-1(a), III-2(a), III-3, III-4, III-5, III-5(a), III-6, III-6(a), III-7 and III-7(a).

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review application of Mr. and Mrs. Schreiber for construction at 22 Mesa Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

1. **Approved Plan Set.** The approved plans are those submitted on August 1, 2012, after neighbors were notified of the project and the plans were available for public review;
2. **Construction Management Plan.** 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 Mesa Avenue;

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. **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 Mechanical;
- viii. Completion of Fire Sprinklers;
- ix. Completion of Home;
- x. Completion of Hardscaping and Landscaping; and
- xi. 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. The Director of Public Works has the option to refer the application to the Planning Commission for public review.

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.

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 Ode

Ayes: Henn, Robertson, Zhang, Ode

Noes: None

Recused: Kellogg

Absent: Chase

**Design Review
255 King Avenue**

Mr. Dan Levin and Ms. Galyn Susman are requesting design review to construct a 7 ft. high land berm (new hill) in the front of the property with boulders, landscape materials and a waterfall; make other landscape and hardscape alterations; and add new landscape lighting.

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

Public testimony was received from:

David Schwartz, Project Landscape Architect, described in detail the features of the proposed landscaped berm, noting that its intent is to block the homeowner's view of the street without resorting to a structural barrier. The proposed tropical/subtropical landscaping of this berm is consistent with the applicant's avid interest in botany and horticulture.

Gayln Susman emphasized that her open front lawn has been a frequent target of teenage drivers. The proposal is designed to prevent vehicle encroachment into the front yard, beautify the front yard and provide privacy to her home without the use of walls or tall fences.

Anne Gritzer, speaking on behalf of her mother Dorothy Cobbledick, stated that her mother has withdrawn her initial objection to the project.

The Commission agreed that the proposal reflects a quite unique and interesting solution for providing privacy to the home without resorting to walls or fences.

Resolution 202-DR-12

WHEREAS, Mr. Dan Levin and Ms. Galyn Susman are requesting permission to construct a 7 ft. high land berm (new hill) in the front of the property with boulders, landscape materials and a waterfall; make other landscape and hardscape alterations; and add new landscape

lighting located at 255 King Avenue, Piedmont, California, which construction requires design review; and

WHEREAS, after reviewing the application, plans and any and all testimony and documentation submitted in connection with such application, and after having visited subject property, the Piedmont Planning Commission finds that the project is categorically exempt under the California Environmental Quality Act, pursuant to Section 15301, Class 1(e) and the proposal conforms with the criteria and standards of Section 17.20.9 of the Piedmont City Code:

1. The exterior design elements are aesthetically pleasing as a whole and harmonious with existing and proposed neighborhood development. The project reflects a high quality landscaping of the front yard that is an improvement over existing conditions.
2. The design is appropriate, considering its effect on neighboring properties' existing views, privacy and access to direct and indirect light because while the proposed improvements are visible to the street and neighbors, they do not affect neighbor views, privacy or light.
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.
4. The project complies with Design Review Guidelines IV-1, IV-1(b) and IV-3.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review application of Mr. Levin and Ms. Susman for construction at 255 King Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

1. **Approved Plan Set.** The approved plans are those submitted on July 24, 2012.
2. **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 applicant's Construction Management Plan.

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. **Modifications to Conditions.** Any insurance or security requirement, or related Condition of Approval, may be implemented and, if necessary modified, in a reasonable manner with the joint agreement of the Director of Public Works and the City Attorney, consistent with the intent of the condition.

7. **City Attorney Cost Recovery.** If there is a substantial additional commitment of City Attorney's time required to accommodate the scope and nature of the Project, the Property Owner shall, at the time of the Building Permit Application, make a cash deposit with the City in the amount of \$5,000 to be used to offset time and expenses of the City Attorney relating to the Project. If the 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 Attorney time and expenses. Any unused amounts shall be refunded to the Property Owner within 90 days after the Project has an approved Final

Inspection by the Chief Building Official.

8. **Final Landscape Plan.** Before issuance of a building permit, the Property Owner shall submit for staff review and approval a Final Landscape Plan that complies with Municipal Code Section 17.17.3, in that it does not plants or other features near the driveway that could obscure visibility of pedestrians on the sidewalk or vehicles on the street from vehicles exiting the driveway.

9. **Berm Height.** The height of the proposed berm shall not exceed that shown in Section AA of the submitted plans.

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 Ode

Ayes: Henn, Kellogg, Robertson, Zhang, Ode

Noes: None

Absent: Chase

**Variance and
Design Review
1116 Warfield Avenue**

Mr. and Mrs. Bart Myers are requesting variance and design review to make various modifications to the rear yard including modifications to the rear patio, fence and stairs; the addition of a spa, a steel frame shade structure, a trampoline, and a play structure; and various hardscape modifications. The requested variance is from Section 17.10.7 to allow the new deck to extend to the left side property line in lieu of the code required minimum of a 4 ft. side yard setback.

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

Public testimony was received from:

Faina Myers described the proposed improvements to the rear yard of her newly purchased home, noting that the new deck will replace an existing concrete patio in the same location. She also described the privacy and sound buffer planned for the spa.

The Commission agreed that the improvements to the rear yard are attractively designed and appropriate. However, it felt that variance approval to encroach into the side setback could not be justified since the deck and spa features could be easily pulled back out of this setback and the resulting 4 ft. open space could be attractively landscaped to provide additional acoustical/visual screening and privacy for the applicant and adjacent neighbor.

Resolution 206-V/DR-12

WHEREAS, Mr. and Mrs. Bart Myers are requesting permission to make various modifications to the rear yard including modifications to the rear patio, fence and stairs; the addition of a spa, a steel frame shade structure, a trampoline, and a play structure; and various hardscape modifications located at 1116 Warfield Avenue, Piedmont, California, which construction requires variance and design review; and

WHEREAS, a variance from the requirements of Chapter 17 of the Piedmont City Code is necessary in order to build within the left side yard setback; and

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

1. 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 do not present unusual physical circumstances because of which 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. The spa and deck related structures currently proposed to be located within the side yard setback can be easily pulled out of this setback. These proposed improvements can be reasonably constructed without variance.
3. The variance is not compatible with the immediately surrounding neighborhood and the public welfare because the side yard setback encroachment is not necessary in order to construct the proposed improvements.
4. Accomplishing the improvement without variance would not cause unreasonable hardship in planning, design, or construction because the proposed improvements can be constructed without variance.
5. The proposal conforms with the criteria and standards of Section 17.20.9 of the Piedmont City Code:
6. The exterior design elements are aesthetically pleasing as a whole and harmonious with existing and proposed neighborhood development in that they are in scale with the size of the property and in keeping with the style of the house in terms of materials and detailing. The proposed improvements create a desirable, open air rear yard environment that benefits the overall property.
7. The design, as conditioned, is appropriate, considering its effect on neighboring properties' existing views, privacy and access to direct and indirect light because there is no material impact.
8. The safety of residents, pedestrians, and vehicle occupants and the free flow of vehicular traffic are not adversely affected, considering the circulation pattern, parking layout and points of ingress and egress because there is no change in existing circulation patterns.

9. The project complies with Design Review Guidelines II-2, II-3(a), (c) & (d), II-5(a), II-6, II-6(a), II-7, V-2, V-5, V-5(a) and V-6.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission denies the variance application and approves the design review application of Mr. and Mrs. Myers for construction at 1116 Warfield 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 issuance of a Certificate of Occupancy.

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 Excavation;
- ii. Completion of Retaining Walls;
- iii. Completion of Foundation;
- iv. Completion of Rough Framing;
- v. Completion of Electrical;
- vi. Completion of Plumbing;
- vii. Completion of Mechanical;
- viii. Completion of Fire Sprinklers;
- ix. Completion of Home;
- x. Completion of Hardscaping and Landscaping; and
- xi. 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.

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. **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.

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

5. **Approved Plan Set.** The approved plans are those submitted on July 31, 2012, after neighbors were notified of the project and the plans were available for public review.

6. **Spa.** The proposed spa and its adjoining structure, which includes raised shelf, bar, stairs and deck, shall be located outside of the 4 ft. side yard setback. Said modification subject to staff review and approval. The applicant has the option to: (i) extend the deck to the property line provided it does not exceed 12 inches in height above adjoining ground height; or (ii) to landscape or add a concrete patio in this setback area that does not require a variance. Said modification subject to staff review and approval.

7. **Fence.** The proposed fence along the property line shall be 6 ft. in height unless the applicant and adjoining neighbor agree on a higher fence height which can be no higher than as proposed on submitted plans (7'3").

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: Henn, Kellogg, Robertson, Zhang, Ode

Noes: None
Absent: Chase

**Second Unit Permit
& Design Review
122 Olive Avenue**

Mr. Richard Weinstein, on behalf of MacArthur LLC, is requesting a Second Unit Permit to legalize a second unit believed to have been constructed prior to 1930; to make interior modifications; make improvements to the existing exterior of the structure including: repairs and in-kind replacements to the walls and roof, and window and door modifications; and to construct two new covered porches with entry stairs at the front of the building; and add new exterior lighting.

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

Public testimony was received from:

Neither the applicant nor a representative was present to speak to the application.

Pat Markovich opposed the application, stating her belief that the illegal second unit was constructed after 1930 and stressing the severe nature of the neighborhood's parking congestion which would be further strained with the approval of the second unit. She noted that the applicant's property currently has no off-street parking for the main house.

Alain Knechtli also opposed legalization of the second unit without requiring off-street parking, stressed that this property has been abandoned for decades, is an eyesore for the neighborhood and any approvals should require the submission and implementation of a landscape plan.

The City Planner stated that documentation exists indicating that the property existed as a two-unit structure prior to 1930 and is eligible to be considered as a property with an exempt second unit.

The Commission agreed that submitted evidence indicates that the building existed as a two unit property prior to 1930 (1911 & 1912 Sanborn Fire Insurance Maps; 1926 Tax Assessment; 1911-12 & 1926 City records and 1920 census); and has been neglected and abandoned for years, posing a public safety hazard. The Commission supported application approval based on the submitted evidence, noting that in connection with permit approval, the applicant is proposing much needed repair and renovation of the existing structure. The Commission agreed that the proposed design improvements will make the structure habitable, are in keeping with the scale of the structure and help restore its original architectural character.

Resolution 202-SU-12

WHEREAS, Mr. Richard Weinstein, on behalf of MacArthur LLC, is requesting an Exempt Second Unit Permit to legalize a second unit believed to have been constructed prior to 1930 located at 122 Olive 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 criteria and standards of Section 17.40.5 of the Piedmont City Code, finding:

- there is sufficient, reliable evidence in support of the finding that this property has and had a second unit prior to 1930, including the documents listed in the August 13, 2012, staff report.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves an Exempt Second Unit Permit application of Mr. Weinstein for an existing second unit at 122 Olive Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City.

Moved by Ode, Seconded by Kellogg

Ayes: Henn, Kellogg, Robertson, Zhang, Ode

Noes: None

Absent: Chase

Resolution 202-DR-12

WHEREAS, Mr. Richard Weinstein, on behalf of MacArthur LLC, is requesting permission to make interior modifications and improvements to the existing exterior of the structure including: repairs and in-kind replacements to the walls and roof, and window and door modifications; and to construct two new covered porches with entry stairs at the front of the building; and add new exterior lighting located at 122 Olive 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 Class 3, Guidelines Section 15301 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 will improve the dilapidated condition of the existing building, especially the front entries, stairs and front porches. The proposed materials and arrangements of structures are compatible with existing structures.
2. The design is appropriate, considering its effect on neighboring properties' existing views, privacy and access to direct and indirect light because there is very little change to the existing footprint.
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. Pedestrian safety will be improved with the new stairs and walkways.

4. The project complies with Design Review Guidelines II-1, II-2, II-3(a) through (d), II-6, II-6(a) through (c), II-7 and II-7(a).

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the Second Unit Permit and design review application of Mr. Weinstein for construction at 122 Olive 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.

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.

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 Excavation;
- ii. Completion of Retaining Walls;
- iii. Completion of Foundation;
- iv. Completion of Rough Framing;
- v. Completion of Electrical;
- vi. Completion of Plumbing;
- vii. Completion of Mechanical;
- viii. Completion of Fire Sprinklers;
- ix. Completion of Home;
- x. Completion of Hardscaping and Landscaping; and
- xi. 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. The Director of Public Works has the option to refer the application to the Planning Commission for public review.

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. **Modifications to Conditions.** Any insurance or security requirement, or related Condition of Approval, may be implemented and, if necessary modified, in a reasonable manner with the joint agreement of the Director of Public Works and the City Attorney, consistent with the intent of the condition.

7. **Approved Plan Set.** The approved plans are those submitted on August 2, 2012, after neighbors were notified of the project and the plans were available for public review;

8. **City Attorney Cost Recovery.** If there is a substantial additional commitment of City Attorney's time required to accommodate the scope and nature of the Project, the Property Owner shall, at the time of the Building Permit Application, make a cash deposit with the City in the amount of \$5,000 to be used to offset time and expenses of the City Attorney relating to the Project. If the 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 Attorney time and expenses. Any unused amounts shall be refunded to the Property Owner within 90 days after the Project has an approved Final Inspection by the Chief Building Official.

9. **Site Safety Security.** The City and the public have an interest in not having an unfinished project blighting the neighborhood and undermining property values. These public interests are primarily safety and aesthetics, and diminishment of property values. Prior to the issuance of a Building Permit, the Property Owner shall provide a specific cash deposit, letter of credit, bank guarantee, or other similar financial vehicle ("Site Safety Security") in the amount of \$25,000 to ensure that the Project site is not left in a dangerous or unfinished state.

a. The Site Safety Security shall be in an amount to include three components:

- (1) safety, which means the cost to make the site and structure safe if construction should cease mid-way through the Project;
- (2) aesthetics, which means an amount to install and maintain landscaping all around the Project to protect the immediate local views from neighbors and public property; and
- (3) staff and consultant time to evaluate and implement this condition.

If, as the Project proceeds, the expected cost of these components increases beyond the original estimate in the opinion of the Director of Public Works, the City may require the Property Owner to increase the amount of the Site Safety Security by the additional amount. The Property Owner shall provide City with written evidence of compliance within 15 working days after receiving written notice of the additional required amount. The City shall retain, at the Property Owner's expense, an independent estimator to verify the total expected costs to complete the Project and any subsequent revisions.

b. The form and amount of the Site Safety Security is subject to the approval of the Director of Public Works. Payment to City under the Site Safety Security shall be made payable upon demand by the City and prior to the issuance of the Building Permit, conditioned solely on the Director of Public Works' certification on information and belief that all or any specified part of such Performance Security is due to the City.

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

10. 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.

11. Building Code Compliance. Compliance with building code criteria will be required. If minor changes to meet the Building Code are required, such as changing the height of railings or modifying windows for egress, those changes may be approved by staff.

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: Henn, Kellogg, Robertson, Zhang, Ode

Noes: None

Absent: Chase

**Variance and
Design Review
215 Highland Avenue**

Mr. and Mrs. Erik Swan are requesting variance and design review to make various interior and exterior modifications to the existing residence including: to demolish an existing sleeping porch and expand an upper level master bedroom and bathroom at the rear; create additional habitable space at the lower level resulting in a new family room, bedroom and full bathroom; make window and door modifications; add exterior lighting; and install two new skylights. The requested variances are from: (1) Section 17.10.7 to allow the proposed addition to extend to within 1'10" of the right side property

line in lieu of the code required minimum of a 4 ft. side yard setback; and (2) Section 17.16 to allow a residence with 4 rooms eligible for use as bedrooms with a 2-car garage measuring 22'10" wide by 18'10" deep in lieu of the code required minimum dimension 18 ft. by 20 ft.

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

Public testimony was received from:

Charlotte Moco and James Pennington-Kent, Project Contractors, read a letter from the applicants describing the proposed improvements intended to modernize and expand the residence to accommodate their growing family. The variances are required to maintain existing building lines as well as acknowledge that the existing 2-car garage is undersized in terms of the City's parking dimensions. It was noted that only one of the two garage parking spaces is currently used for parking -- the other space houses fitness equipment.

The Commission agreed that the design of the improvements elegantly corrects the architectural deficiencies of the current "tacked on" rear addition. As to variance, the Commission agreed that (i) the side setback variance is justified to maintain the home's architectural integrity in terms of eave overhang continuity; and (ii) the parking variance is justified since the existing 2-car garage is only slightly undersized per code dimensions but can still accommodate the parking of two vehicles if a driveway ramp is added to access this second parking space (as is the case with the other space). The Commission noted the deteriorated condition of the driveway and requested that in connection with either driveway regrading and/or ramp construction so as to fully access the garage by two vehicles, an arborist be retained to protect the dawn redwoods per the property's tree trust.

Resolution 208-V/DR-12

WHEREAS, Mr. and Mrs. Erik Swan are requesting permission to make various interior and exterior modifications to the existing residence including: to demolish an existing sleeping porch and expand an upper level master bedroom and bathroom at the rear; create additional habitable space at the lower level resulting in a new family room, bedroom and full bathroom; make window and door modifications; add exterior lighting; and install two new skylights located at 215 Highland Avenue, Piedmont, California, which construction requires variance and design review; and

WHEREAS, variances from the requirements of Chapter 17 of the Piedmont City Code are necessary in order to construct within the right (north) side yard setback and add a 4th bedroom without supplying conforming parking; and

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

1. The project is categorically exempt under the California Environmental Quality Act, pursuant to Section 15301, Class 1(e)

2. The underlying lot and existing improvements present unusual physical circumstances, including but not limited to the fact that: (i) the existing garage structure has the capability to house two vehicles but is slightly shorter in dimension than the code requirement; and (ii) the wall of the existing structure is in the same position relative to the side property line as the proposed addition and without variance, the new addition would not conform with existing building lines resulting in a tacked on appearance. 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 is no material impact on neighbors.

4. Accomplishing the improvement without variance would cause unreasonable hardship in planning, design, or construction because as conditioned, the existing garage will accommodate the parking of two vehicles so it would be unreasonable to demolish and rebuild this structure merely to meet the code's parking space dimension. With regard to the side setback, without this variance the design, quality and architectural integrity of the existing home would be detrimentally compromised.

5. The proposal conforms with the criteria and standards of Section 17.20.9 of the Piedmont City Code:

6. The exterior design elements are aesthetically pleasing as a whole and harmonious with existing and proposed neighborhood development. The materials, roof pitch, detailing and architectural style of the proposed addition is in keeping with the architectural style of the existing residence. The project proposes an elegant solution for replacing an existing "tacked on" rear structure with a new addition that improves the aesthetics and usability of the residence.

7. The proposed upper level addition/expansion has been designed in a way that reasonably minimizes view and light impacts on neighboring properties because the new addition is essentially in the same location as an existing structure. The proposed improvements do not impose any material impact on neighbors.

8. The size and height of the addition is commensurate with the size of the lot and is in keeping with the existing neighborhood development pattern. The massing, siting and location of the proposed improvements are sensitively planned and designed so as to appear to be original construction.

9. 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. As conditioned, vehicle ingress/egress onto the property and garage will be improved.

10. The project complies with Design Review Guidelines II-1, II-2, II-3(a) through (d), II-5, II-6, II-6(a), II-7 and II-8.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the variance and design review application of Mr. and Mrs. Swan for construction at 215 Highland Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

1. **Approved Plan Set.** The approved plans are those submitted on August 2, 2012, after neighbors were notified of the project and the plans were available for public review;

2. **Construction Management Plan.** 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 Highland Avenue;

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. **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 Mechanical;
- viii. Completion of Fire Sprinklers;
- ix. Completion of Home;
- x. Completion of Hardscaping and Landscaping; and
- xi. 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. The Director of Public Works has the option to refer the application to the Planning Commission for public review.

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. **Doors.** The proposed windows shall have true or three-dimensional simulated divided light grids.

7. **Skylights.** The proposed skylight flashings shall be painted to match the adjacent roof color.

8. **Driveway.** The driveway to the garage shall be regraded to provide a level entrance into both parking spaces. As appropriate, a separation french drain may be installed at the front face of the building to separate the new grading from the existing wood structure at the floor of the garage. The design, materials and layout of the driveway shall be subject to staff review and approval. The applicant has the option to restructure the floor slab of the garage so that it would not be elevated above the driveway, thereby not requiring the driveway to be regraded. This option, if chosen, shall be subject to staff review and approval.

9. **Garage Doors.** The garage doors shall be made mechanically operable.

10. **Arborist Report.** An arborist report shall be required to analyze the effect of the existing driveway on the health and safety of the two protected redwood trees, both in terms of auto circulation over the root structure of these trees and the regrading of the driveway into the existing garage.

RESOLVED FURTHER, that the approval of the Planning Commission/City Council and any conditions of that approval shall not extend to any particulars set forth in the documents submitted for the

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

Moved by Kellogg, Seconded by Henn

Ayes: Henn, Kellogg, Robertson, Zhang, Ode

Noes: None

Absent: Chase

By procedural motion moved by Commissioner Kellogg, seconded by Commissioner Robertson and unanimously carried, the Commission agreed to extend tonight's meeting beyond 11:30 p.m. in order to complete agenda consideration.

Chapter 17 Rewrite

As introduced at the Commission's June meeting and discussed at the July meeting, the City Planner requested public and Commission input regarding proposed changes to Chapter 17, with tonight's focus on possible changes related to the keeping of chickens. She stated that Ms. Martha Bureau of 140 Wildwood Avenue has submitted a petition signed by 26 residents and neighbors supporting her request that the Commission develop code amendments aimed at regulating the keeping of chickens within City limits.

Correspondence was received from: Tom Curran; Martha Bureau; Frank & Lesley Yeary; Philip Chase; Helen Danhaki; Eleanor Gordon;

Public testimony was received from:

Colby Lavin, Bill Essert, Erich Horn and Jan Matsuno, all urged that Chapter 17 not be amended to include regulations/restrictions on the keeping of chickens. They stressed the benefits raising chickens can provide as pets and learning experiences/responsibilities for children, garden advantages in terms of less bugs/weeds and providing organic fertilizer components for composting and providing a more green lifestyle for residents by consuming green food waste as well as providing fresh eggs. They felt that the City's existing regulations regarding noise are sufficient to control any impacts and stressed that chickens are no more noisy or disease carriers than dogs or cats.

Stephen Lee requested that regulations be established limiting the number of chickens a resident can have as well as requiring that chicken coops/runs be at least 20 ft. away from adjoining property. He cited problems encountered with his chicken-owning neighbor in terms of smell, noise and chicken encroachment onto his property.

The Commission did not support amending Chapter 17 to incorporate chicken-related regulations, believing that the City's current animal control related laws are sufficient to address complaints. However, Commissioner Henn supported Animal Control related regulations limiting the number of chickens that can be housed on a property as well as regulating the location of coops and runs. He suggested that residents who desire more than 5 to 8 chickens be required to obtain a

permit from the City and the consent of adjoining neighbors. Vice Chairman Zhang suggested that the City's Animal Control Officer be requested to keep a record of chicken-related incidents/complaints, with Commissioner Robertson suggesting that this matter be revisited in the future if more public input is received.

ADJOURNMENT

There being no further business, Vice Chairman Zhang adjourned the meeting at 12:20 a.m.