

PIEDMONT PLANNING COMMISSION

Regular Meeting Minutes for Monday, January 9, 2012

A Regular Session of the Piedmont Planning Commission was held January 9, 2012, in the City Hall Council Chambers at 120 Vista Avenue. In accordance with Government Code Section 54954.2(a) the agenda for this meeting was posted for public inspection on December 30, 2011.

CALL TO ORDER

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

ROLL CALL

Present: Commissioners Phillip Chase, Michael Henn, Jim Kellogg, Melanie Robertson and Clark Thiel

Absent: Alternate Commissioner Tom Zhang (excused)

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

City Council Liaison: Councilmember Margaret Fujioka

ANNOUNCEMENT

The City Planner announced that tonight's agenda incorrectly listed the meeting starting time as 5:30 p.m. instead of 5:00 p.m. However, all meeting notices mailed to applicants contained the correct 5:00 p.m. start time. To compensate for any possible confusion, she recommended that the Commission reorder the agenda by delaying Consent Calendar action until after the conclusion of the discussion of proposed Second Unit Code Changes; the Commission concurred.

Resolution 1-PL-12

RESOLVED, that the Planning Commission reorders tonight's agenda by scheduling Consent Calendar consideration after the public hearing on proposed Second Unit Code changes.

Moved by Chase, Seconded by Thiel

Ayes: Chase, Henn, Kellogg, Robertson, Thiel

Noes: None

Absent: Zhang

APPROVAL OF MINUTES

Resolution 2-PL-12

RESOLVED, that the Planning Commission approves as submitted its meeting minutes of December 12, 2011.

Moved by Thiel, Seconded by Kellogg

Ayes: Chase, Henn, Kellogg, Robertson, Thiel

Noes: None

Absent: Zhang

PUBLIC FORUM

Rick Schiller reviewed his extensive research in setting forth his reasons for opposing the Sewer Tax Surcharge Measure on the February 7th Municipal Election Ballot, urging residents to disregard City staff's misrepresentations of the EPA orders and stipulations cited as reasons for the proposed 50% tax surcharge.

**PROPOSED SECOND
UNIT CODE CHANGES**

The Commission continued its November 14 and December 12, 2011, discussion of proposed revisions to the City's Second Unit Code in order to bring it into compliance with General Plan Housing Element Actions. Tonight's focus is on possible solutions for eliminating two potential Code conflicts regarding rooming houses and second units and to address related issues associated with public safety, permitting and enforcement procedures. The City Planner suggested that code amendments be proposed that address the archaic language/definitions in the code related to "rooming or boarding houses," codify Piedmont's long-standing practice of allowing residents to rent out one or two rooms in their home, reaffirm and clarify the Code's prohibition against "rooming/boarding houses," clearly identify and define the differences between legal second units and legal rented rooms and provide a permitting process for each and provide a mechanism to allow the City Building Official to inspect rented rooms to insure that they are safe for habitation/sleeping purposes.

Correspondence was received from: Mary McFarland; John Welch; Rich Schiller; Paul Faberman; Chris Ford; Bernie Stein; Maureen Kennedy

Public testimony was received from:

Victoria Hartsock urged that residents be allowed to continue to rent rooms. She stated that as retirees, and empty nesters, she and her husband rent a room in their home to provide extra income, stressing that the overall density of their property is unchanged from that when her children lived at home.

Rick Schiller supported the continuing ban on rooming/boarding houses, agreeing that they are incompatible with Piedmont's character. He also supported allowing residents to rent out a maximum of two rooms in their homes but opposed the suggestion that the Building Official be authorized to inspect such rental arrangements, believing it to be too intrusive and a violation of Constitutional rights to privacy. He also suggested that the Code differentiate between room rentals and second units by requiring that rooms with separate exterior entrances be considered "second units."

The Commission discussed the issues and suggestions contained in the Planner's staff report at length, agreeing that: (1) archaic code language should be updated and modernized; (2) boarding houses should be prohibited but room rentals allowed; (3) rather than placing the burden/liability on the City to inspect and verify that rental rooms are safe for habitation, property owners be required to sign a declaration attesting to this fact on their application forms; and (4) rather than limiting the number of rooms which can be rented within a home, a property owner be allowed one master lease and possibly one sublease per property.

As before, the Commission and City Planner continued to encourage residents to submit comments/suggestions regarding this topic. The City Planner agreed to provide draft language for amending the Second Unit Code to incorporate said suggestions for Commission consideration at the next Planning Commission meeting with room on the agenda for the topic.

CONSENT CALENDAR

The following Resolutions were approved under one vote by the Commission:

**Design Review
96 La Salle Avenue**

Resolution 279-DR-11

WHEREAS, Mr. and Mrs. Ed Schneider are requesting permission to demolish an existing arbor in the front garden and construct in its place a new greenhouse located at 96 LaSalle Avenue, Piedmont, California, which construction requires design review; and

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

1. The exterior design elements (including but not limited to height, bulk, area openings, breaks in the façade, line and pitch of the roof, materials, arrangements of structures on the parcel, and concealment of mechanical and electrical equipment) are aesthetically pleasing as a whole and harmonious with existing and proposed neighborhood development in that: This is a classic English glass-house imported from the UK which is fully in keeping with the faux Tudor facade of our house and which is necessary to maintain our gardens.
2. The design is appropriate, considering its effect on neighboring properties' existing views, privacy and access to direct and indirect light because only the very top of the greenhouse could be seen from the street. Its volume approximates the arbor it replaces and of course it is transparent. It will not reduce the amount of greenery but add to it.
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 it is not affected.

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

1. **Construction Management Plan.** The Property Owner shall develop a comprehensive Construction Management Plan. The Construction Management Plan shall address noise, vibrations, traffic control, parking, debris removal, dust control, sanitary facilities, and other potential construction impacts, as well as other details involving the means and methods of completing the Project, including the construction route. The City Building Official has the authority to require modifications and amendments to the Construction Management Plan as deemed necessary throughout the course of the Project and until the Final Inspection.

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

3. **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.

**Fence Design Review
53 Crest Road**

Resolution 357-DR-11

WHEREAS, Mr. Aric Shalev and Ms. April Gruber are requesting permission to install a new pedestrian gate and seek retroactive approval for the installation of a driveway gate along Crest Road located at 53 Crest Road, Piedmont, California, which construction requires design review; and

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

1. The exterior design elements (including but not limited to height, bulk, area openings, breaks in the façade, line and pitch of the roof, materials, arrangements of structures on the parcel, and concealment of mechanical and electrical equipment) are aesthetically pleasing as a whole and harmonious with existing and proposed neighborhood development in that: The guardrail and front entry gate and proposed pedestrian gate are in keeping with the 1950's mid-century design of the house. The guardrail is to code, unimposing and a light/pleasing design. The front gates are an appropriate size and scale for the property while maintaining privacy and security. The gates are in the same location as existing previous gates.

2. The design is appropriate, considering its effect on neighboring properties' existing views, privacy and access to direct and indirect

light because: The design of the guardrail and front gates does not impact neighboring properties' views, privacy and access to 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: The three new/proposed elements do not affect the safety of residents, pedestrian and vehicle occupants or the free flow of vehicular traffic. However, the (2) new gates to the property do increase privacy, safety and security for the home.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review application of Mr. Shalev and Ms. Gruber for construction at 53 Crest Road, Piedmont, California, in accordance with the plans and specifications on file with the City.

RESOLVED FURTHER, that the approval of the Planning Commission/City Council and any conditions of that approval shall not extend to any particulars set forth in the documents submitted for the project which are inconsistent with or in violation of any applicable law, including but not limited to Chapters 5 and 17 of the City Code, nor does the approval extend to matters not set forth, or inadequately represented, in submitted documents (whether or not consistent with applicable law). The City reserves the right to require compliance with applicable laws and to attach conditions after initial approval is given, if noncompliance is discovered or additional conditions are considered necessary and appropriate in light of Commission/Council findings.
Moved by Robertson, Seconded by Chase
Ayes: Chase, Henn, Kellogg, Robertson, Thiel
Noes: None
Absent: Zhang

REGULAR CALENDAR

Design Review 140 La Salle Avenue

The Commission considered the following items of regular business:

Mr. and Mrs. Rob Williamson are requesting design review for retroactive approval of an altered rear mid-level terrace roof from an open trellis to a solid sloped roof plus the addition of a mounted exterior television and speakers on the terrace wall, two ceiling fans with lights, a wall mounted outdoor heater and a retractable sun shade.

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

Public testimony was received from:

Robert Williamson apologized for failing to obtain proper approvals and permits for the modifications to the rear deck, stressing that the overall scale and visual bulk of the residence remains unchanged.

Pamela Bedbrook opposed the already constructed modifications, stressing that the improvements are not high quality in terms of materials or design, the outdoor TV, speakers and lighted fans impose visual and audio intrusions on neighbors and the creation of an outdoor movie theater in the applicant's rear yard is inappropriate.

The Commission agreed that the quality of design and construction fails to comply with the City's Design Review Guidelines. However, Chairman Henn supported project approval if: (1) the plywood siding was removed and replaced with more appropriate material; (2) existing vegetation was allowed to grow in height to better screen the deck from neighbor view; and (3) the operation of the TV and speakers was held in compliance with the City's noise ordinance. The remaining Commissioners felt that significant modifications were required to make the project approvable, suggesting that: (1) the plywood panels be removed and existing columns be extended upward to the roof; (2) the lights on the fans need to be downward-directed and shielded to comply with the City's outdoor lighting guidelines and verification submitted that the fans are rated for outdoor use; (3) the overall design needs to be better integrated with the existing house to eliminate its current "tacked on" appearance, e.g., more replication of the existing home's architectural detailing, roof lines and facias in the new addition; (4) TV light pollution needs to be addressed; (5) verification that noise from the TV and speakers comply with the City's noise ordinance; (5) safety and aesthetic issues related to the gas grill and the exterior location of gas and utility lines need to be addressed -- said utility lines should be concealed from view; and (6) consideration be given to creating a waterproof, horizontal arbor/trellis roof structure which would be less visually intrusive than the current shed roof design.

Resolution 307-DR-11

WHEREAS, Mr. and Mrs. Rob Williamson are requesting retroactive permission for the construction of an altered rear mid-level terrace roof from an open trellis to a solid sloped roof plus the addition of a mounted exterior television and speakers on the terrace wall, two ceiling fans with lights, a wall mounted outdoor heater and a retractable sun shade located at 140 La Salle Avenue, Piedmont, California, which construction requires design review; and

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

1. The exterior design elements are not aesthetically pleasing as a whole or harmonious with existing and proposed neighborhood development in that the new improvements do not utilize similar materials, design detailing and the architectural ornamentation found on the home and the shed roof is inconsistent with the home's hip roof style. The project fails to comply with Design Review Guidelines II-2, II-3, II-3(a), (b) & (d).
2. The design is not appropriate, considering its effect on neighboring properties' existing views, privacy and access to direct and indirect light because of the project's roof design, the mounting of the TV and speakers directly on the wall of the house and the non-downward directed fan lights. The project creates light spill and noise impacts on neighbors and compromises neighbor privacy. The project fails to comply with Design Review Guidelines II-7 and II-7(a).

3. The safety of residents, pedestrians, and vehicle occupants and the free flow of vehicular traffic are not adversely affected, considering the circulation pattern, parking layout and points of ingress and egress.

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

Moved by Kellogg, Seconded by Thiel

Ayes: Chase, Kellogg, Robertson, Thiel

Noes: Henn

Absent: Zhang

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

**Design Review
55 Wildwood Gardens**

Mr. and Mrs. Ed Thornborrow are requesting design review to expand the residence by 272 sq. ft. by constructing an enclosure of the second floor rear roof deck.

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

Public testimony was received from:

Rebecca Thornborrow stated that roof deck has leaked and damaged the home's interior and the best solution for preventing this type of problem in the future is to enclose this deck and convert it into a study.

Matt Grocott, Project Architect, explained that the intent of the enclosure's design is to recreate the appearance of a turn-of-the-century sleeping porch that is in keeping with the home's architectural heritage. Architectural detailing on the home will be incorporated into the enclosure and the extension of the enclosure is intended to break up the rear facade for better aesthetics. He added that the exterior wood paneling helps add texture to the home's exterior and will be painted to match the house.

The Commission supported application approval, agreeing that the project is well integrated with the house, consistent with the City's Design Review Guidelines and a good solution for correcting a water leak problem.

Resolution 363-DR-11

WHEREAS, Mr. and Mrs. Ed Thornborrow are requesting permission to expand the residence by 272 sq. ft. by constructing an enclosure of the second floor rear roof deck located at 55 Wildwood Gardens, 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. These elements include but are not limited to: height, bulk, area openings, breaks in the façade, line and pitch of the roof, materials and arrangements of structures on the parcel. The distance between the proposed upper level addition/expansion and adjacent residences is substantial because of the large canyon area. The project complies with Design Review Guidelines II-1, II-2, II-3, II-3(a) through (d), II-5, II-5(a), II-6(a) & (b).
2. The proposed upper level addition/expansion has been designed in a way that reasonably minimizes view and light impacts on neighboring properties (as defined in Section 17.2.70), including consideration of the location of the new construction, lowering the height of the addition, expansions within the existing building envelope (with or without excavation), lower level excavation for new multi-level structures, and/or changing the roof slope or ridge direction. The project complies with the above-cited Design Review Guidelines as well as II-7 and II-7(a).
3. The size and height of the addition is commensurate with the size of the lot and is in keeping with the existing neighborhood development pattern. The proposed improvements are well integrated into the existing house and there is a large, open canyon separating the addition from neighboring properties. The project complies with the above-cited Guidelines.
4. The safety of residents, pedestrians, and vehicle occupants and the free flow of vehicular traffic are not adversely affected, considering the circulation pattern, parking layout and points of ingress and egress. There is no change in existing circulation patterns and the enclosure of a third floor balcony will be safer for the home's occupants.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review application of Mr. and Mrs. Thornborrow for construction at 55 Wildwood Gardens, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

1. **Window color.** The color of the new windows shall match that of the existing windows throughout the house.
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; and
- vii. 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.

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. **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. **Wood Siding.** The exterior wood siding shall be consistent with the existing wood siding on the house.

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

Moved by Robertson, Seconded by Kellogg

Ayes: Chase, Henn, Kellogg, Robertson, Thiel

Noes: None

Absent: Zhang

**Variance and
Design Review
63 Prospect Road**

Mr. Rick Rosenbaum and Ms. Pam Gelman are requesting variance and design review to construct a new trellis-style carport in the rear southwestern corner of the lot; make interior modifications including the conversion of the existing basement parking space into a family room; construct a new steel and glass awning over the front door; make window and door modifications; make landscape and site modifications and add exterior lighting. The requested variances are from: (1) Section 17.10.6 to allow the proposed front door awning to extend to within 15'8" 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 proposed carport trellis to extend to within 8" of the left side yard 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 proposed carport trellis to extend to within 8" 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. **Two affirmative response forms** were received.

Public testimony was received from:

Rick Rosenbaum summarized the extensive design options examined in an effort to satisfy his needs while minimizing neighbor impacts and his belief that the proposed design is the best solution. He noted that as designed, the project preserves the property's current number of off-street parking spaces, does not change the home's existing bedroom count, improves the usability of the rear yard and upgrades the structural integrity of the home.

Alison Keene, Project Architect, responded to Commission questions concerning awning design and material, driveway surface options and turnaround workability.

The Commission, with the exception of Commissioner Thiel, supported application approval, agreeing that: (1) the property's off-street parking capability will be improved given that the existing garage is essentially

unusable for parking because of its impossible ingress/egress; (2) utilizing existing basement space for the addition will not increase the home's existing footprint and provides for a logical floor plan; (3) the proposed project increases the usability of the home and rear yard while retaining the property's existing off-street parking capability -- there is no increase in the property's bedroom count or density; (4) the carport's open, airy trellis design minimizes impacts on adjacent neighbors; and (5) the front awning is reasonable and desirable as a means of providing weather protection at the home's front door and its proposed design will create less visual bulk and mass and intrude less into the front setback than a design which more closely replicates the home's existing architecture. Commissioner Thiel felt that: (1) the proposed carport would not be used for parking because of its inconvenient location and ingress/egress, thus resulting in the creation of a more functional 3-bedroom house with less off-street parking; (2) the front door awning is not architecturally compatible with the home; and (3) a better option would be to create the additional living space by excavating other areas of the basement. As a side issue, the Commission recommended that downward-directed exterior lighting that is consistent with the City's lighting guidelines be added to the carport.

Resolution 384-V/DR-11

WHEREAS, Mr. Rick Rosenbaum and Ms. Pam Gelman are requesting permission to construct a new trellis-style carport in the rear southwestern corner of the lot; make interior modifications including the conversion of the existing basement parking space into a family room; construct a new steel and glass awning over the front door; make window and door modifications; make landscape and site modifications and add exterior lighting located at 63 Prospect Road, 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 left side, rear and front 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 property's long, narrow, down-sloping driveway which does not allow for a turnaround for the existing garage, making this garage unusable for parking. The proposed carport rectifies this situation. 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 side and rear setback encroachment allows the proposed carport to be tucked into the rear

corner of the property which makes it less visible to neighbors. The front awning intrusion into the front setback is minimal and is a practical solution for providing weather protection at the front door. There were no neighborhood objections to the project.

4. Accomplishing the improvement without variance would cause unreasonable hardship in planning, design, or construction because other design options are more costly and they would not improve the existing garage turnaround situation.

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

6. The exterior design elements (including but not limited to height, bulk and roof materials of the carport) are aesthetically pleasing as a whole and harmonious with existing and proposed neighborhood development in that the project complies with Design Review Guidelines II-1, II-2, II-3, II-4, II-5, II-6 and III-1.

7. The design is appropriate, considering its effect on neighboring properties' existing views, privacy and access to direct and indirect light because there are no impacts on neighboring properties. The project complies with Design Review Guidelines III-6 and III-7.

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 project complies with Design Review Guidelines III-7 and III-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. Rosenbaum and Ms. Gelman for the above variances at 63 Prospect Road, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

1. **Construction Management Plan.** The Property Owner shall develop a comprehensive Construction Management Plan. The Construction Management Plan shall address noise, vibrations, traffic control, parking, debris removal, dust control, sanitary facilities, and other potential construction impacts, as well as other details involving the means and methods of completing the Project, including the construction route. The City Building Official has the authority to require modifications and amendments to the Construction Management Plan as deemed necessary throughout the course of the Project and until the Final Inspection.

a. Stormwater BMPs for Construction. Property Owner shall implement (1) stormwater treatment Best Management Practices (BMPs) and (2) Bay Area Stormwater Management Agencies Association's "Start at the Source" criteria for stormwater quality protection. City Staff may impose additional requirements involving the prevention of storm water pollution during construction and permanent drainage, erosion and sediment control. These items will be reviewed as part of the Property Owner's Construction Management Plan.

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

3. **Contractor's General Liability Insurance.** To ensure that the contractor doing work in the City will be responsible for damages caused by the work to City property or to neighboring property, the Property Owner shall require all contractors and subcontractors performing work on the Project to maintain General Liability Insurance for protection from claims for damages because of bodily injury, including death, and claims for damages, other than to the contractor's work itself, to property which may arise out of or result from the contractor's operations. Such insurance shall be written for not less than \$1,000,000 per occurrence. The insurance shall include builder's risk. The insurance shall include an endorsement requiring 30 days' notice to the City if the insurance is cancelled or changed, and Property Owner shall immediately arrange for substitute insurance coverage. As an alternative to requiring each subcontractor to obtain General Liability Insurance, the Property Owner may require the General Contractor to obtain an endorsement to cover his or her subcontractors.

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

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

5. **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.

6. **Encroachment Permit.** Before the issuance of a building permit, the Property Owner shall apply for an encroachment permit to allow for the construction within the public right-of-way or public easement.

7. **Attic.** Because the attic space does not meet the current ceiling height requirements of the Piedmont Municipal Code, the plans submitted shall label the space "playroom" and shall have the following note on the floor plan: "This space was approved as a play room in 1939 but does not meet the current Piedmont Building Code requirement of an average 7'6" ceiling height, and does not meet the Piedmont Zoning Code definition of a room eligible for use as a bedroom."

8. **Driveway Material.** The driveway material shall not be plain or untinted/uncolored concrete. Said material 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 Chase, Seconded by Robertson

Ayes: Chase, Henn, Kellogg, Robertson

Noes: Thiel

Absent: Zhang

Next Meeting

The City Planner announced that it is likely that a design review application for the Blair Park Sports Field Development Project will be submitted for Commission consideration at the February 13 meeting, in addition to the Commission's continuing discussion of possible changes to the Second Unit Code as well as individual design review/variance applications submitted from residents. The Commission directed that the order of the February agenda be developed per the planning department's standing practice, with the exception that the Second Unit Code discussion be scheduled as the last item on the agenda (no preferential scheduling treatment shall be given to the Blair Park application). In the event it appears that there will be numerous applications from the general public scheduled for the February meeting, staff was requested to poll Commissioners to determine a special meeting date wherein the Blair Park application can be considered separately.

ADJOURNMENT

There being no further business, Chairman Henn adjourned the meeting at 8:25 p.m.