

PIEDMONT PLANNING COMMISSION

Regular Meeting Minutes for Monday, July 9, 2012

A Regular Session of the Piedmont Planning Commission was held July 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 August 31, 2012.

CALL TO ORDER

Chairman Chase called the meeting to order at 5:00 p.m. He announced that Agenda Item #8 (Conditional Use Permit, 1345 Grand Avenue) has been withdrawn from tonight's consideration.

ROLL CALL

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

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

CONSENT CALENDAR

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

Fence Design Review 320 Wildwood Avenue

Resolution 160-DR-12

WHEREAS, Mr. Scott Cauchois and Ms. Karen Notsund are requesting permission to make side yard improvements on the southeast side of the property, including to construct a new fence; install a new screen door; add exterior lighting; install railing; and make other landscape modifications located at 320 Wildwood 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: The fence at the sidewalk is only 33" tall like others on Wildwood. The rest of the fence is stepped with the taller side being around 75" and the low side being 55". The garbage can enclosure is see through at the top to minimize bulk. The uplite is facing the fence and will not shine at the adjacent houses. The light at the rear door is downward pointed with an opaque shade and high efficiency.

2. The design is appropriate, considering its effect on neighboring properties' existing views, privacy and access to direct and indirect light because: We talked with the adjacent neighbors about the location

and height and adjusted accordingly. This fence beautified 10 Prospect by increasing their privacy in their backyard. The design does not affect light or views of neighbors.

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: This fence does not affect the safety of pedestrians or vehicle flow in any way.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review application of Mr. Cauchois and Ms. Notsund for construction at 320 Wildwood Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following condition:

- The approved plans are those submitted on June 29, 2012, after neighbors were notified of the project and the plans were available for public review;

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

Moved by Henn, Seconded by Kellogg

Ayes: Chase, Henn, Kellogg, Robertson, Zhang

Noes: None

Absent: None

PUBLIC FORUM

There were no speakers for the public forum.

APPROVAL OF MINUTES

Resolution 12-PL-12

RESOLVED, that the Planning Commission approves as submitted its meeting minutes of June 11, 2012.

Moved by Robertson, Seconded by Zhang

Ayes: Chase, Henn, Kellogg, Robertson, Zhang

Noes: None

Absent: None

By procedural motion made by Commissioner Robertson, seconded by Commissioner Zhang and unanimously carried, the Commission agreed to reorder agenda consideration to accommodate applicant requests.

REGULAR CALENDAR

The Commission considered the following items of regular business:

Design Review

Mr. and Mrs. Benjamin Williams are requesting design review to

212 Lafayette Avenue

stylistically alter and remodel the house by making changes to the roof, walls, windows, doors, garage doors, chimney, guardrails, exterior lighting, skylights, front entry, roof deck cover and rear deck and stairs; make various changes to the interior; modify the previously approved swimming pool and spa; install underground rainwater cisterns and related sub-grade mechanical equipment in the front, west side and rear yards; and make landscape and hardscape changes throughout, including a new entry path, configuration and the replacement of on-grade stairs with handrail in the east side yard.

Related applications for this property were approved by the Planning Commission on July 11, 2011 and the staff on January 4, 2012.

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

Public testimony was received from:

Hadley Williams explained the reasoning behind the proposed stylistic change to and overall remodel of her recently purchased home to create a more sleek, contemporary look, incorporate green technologies and achieve a LEED Platinum rating. In response to her neighbor's concerns related to drainage and exterior lighting, she emphasized that the proposed stormwater capture and recycle cistern system will eliminate any water runoff onto neighboring properties and all exterior lights will be downward directed with opaque shades.

Andrew Mann, Project Architect, submitted colored renderings of the proposed design in describing the proposed changes to the existing traditional colonial to create a more modern, sleek architectural style. He felt the proposed stylistic changes would be compatible with the existing architectural mix of the neighborhood, stressing that there will be no change in the home's existing square footage or massing. He also clarified that there will be no change in the home's existing bedroom count -- the house will remain a 4-bedroom residence.

Scott Lewis, Project Landscape Architect, submitted colored renderings of the proposed relandscaping of the property, stating that the home's landscape is designed to compliment the home's architecture and create an attractive, sustainability environment of native plants, fruit trees, vegetables as well as provide an extensive surface water collection system. The proposed underground cistern system will be located under the rear yard lawn.

Bill Wilson, Environmental Engineering & Sustainability Consultant, explained in detail how all surface water will be collected and reused through the proposed drainage and cistern collection system, noting that the proposed project is a LEED Platinum rated project.

Davis Hanson, Michael Roth and Sherry Williamson, drainage consultant, project contractor and design consultant, respectively, responded to questions concerning drainage, sump pump operations and garage door design and operation.

Herbert Friedman reviewed the damage his property has incurred from the property's former owner's overwatering habits, noting his belief that

the proposed new drainage and water collection system should mitigate any future problems. He also stated that the applicant's existing master bedroom deck (southwest corner) is only approximately 8 to 10 ft. from his property. This deck directly overlooks his rear yard, its exterior lighting is very intrusive and when the deck is being utilized, imposes significant noise and privacy impacts to his home. He requested that this deck be screened to provide more privacy protection.

The Commission supported project approval, agreeing that the stylistic architectural changes will be compatible with the neighborhood, the existing drainage situation will be dramatically improved and all exterior lighting will be more subdued and less intrusive than existing to minimize neighbor impacts. In response to Mr. Friedman's concerns, the Commission requested that rather than the proposed lowering of the existing stucco parapet wall and the addition of a metal guardrail around the west side of the Master Bedroom deck, the solid wall be raised to the code compliant height of 42 inches to provide more privacy to the adjacent neighbor.

Resolution 118-DR-12

WHEREAS, Mr. and Mrs. Benjamin Williams are requesting permission to stylistically alter and remodel the house by making changes to the roof, walls, windows, doors, garage doors, chimney, guardrails, exterior lighting, skylights, front entry, roof deck cover and rear deck and stairs; make various changes to the interior; modify the previously approved swimming pool and spa; install underground rainwater cisterns and related sub-grade mechanical equipment in the front, west side and rear yards; and make landscape and hardscape changes throughout, including a new entry path, configuration and the replacement of on-grade stairs with handrail in the east side yard located at 212 Lafayette 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. These elements include but are 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. 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. The proposed improvements create a unified appearance.
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: Some of the eaves have been removed to create more open space, there is no significant change in roof height and the extension of the second floor deck is below the ridge height and is very low sloped where it is closest to the property line so it will have little impact on neighbor views or light.

3. The size and height of the addition is commensurate with the size of the lot (excluding the portions of the lot that cannot reasonably be built on), and is in keeping with the existing neighborhood development pattern: the increased roof size is the only additional bulk being added to the house and it is very small (8-1/2 ft. by 4'9") and will have no negative impact on neighboring properties.

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. In accordance with Sections 17.16.1 and 17.22.1, the existing or proposed on-site parking is appropriate to the size of the new multi-level addition, and additional parking is not required to prevent unreasonable short and/or long term parking impacts on the neighborhood. There is no change in existing circulation flow of traffic. The project retains two conforming garage spaces with good ingress/egress visibility.

5. The project complies with Design Review Guidelines II-1, II-2, II-3(a) through (d), II-4, 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 design review application of Mr. and Mrs. Williams for construction at 212 Lafayette Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

1. **Approved Plans.** The approved plans are those submitted on June 19, 2012, with additional information submitted on June 27, 2012, after neighbors were notified of the project and the plans were available for public review;

2. **Garage Doors.** The garage doors shall be electronically operated;

3. **Exterior Light Fixtures.** Exterior light fixtures shall be downward-directed with an opaque or translucent shade that completely covers the light bulb;

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

Management Plan as deemed necessary throughout the course of the Project and until the Final Inspection.

a. Stormwater BMPs for Construction. Because this Project anticipates the addition or replacement a significant area of impervious surface, the Property Owner shall prepare a stormwater management plan prior to obtaining a building permit. As required by the City's Municipal Regional Stormwater NPDES Permit and to the extent practicable, the plan shall incorporate site design practices and measures to promote infiltration of stormwater during and after construction, and reduce the amount of impervious surface on the site as outlined in the following documents: The Bay Area Stormwater Management Agencies Association's (BASMAA) "Start at the Source" design guidance manual, which is available in PDF format at www.cleanwaterprogram.org/businesses_developers.htm; BASMAA's "Permanent Post-Construction Stormwater BMP Fact Sheets;" or the State of California Best Management Practices Handbooks.

b. Engineer Consultant. The City will, at the Property Owner's sole cost, engage the services of an Engineer to review the results of the geotechnical report, prepare a sound and vibration mitigation plan, and monitor the vibration and decibel levels at the Project (including being periodically present at the construction site during excavation and foundation work). If, in the Engineer's sole discretion, such monitoring indicates that the sound or vibration levels exceed those anticipated in the Property Owner's Construction Management Plan, all work on the Project may be immediately stopped by the City and may not resume until the City Engineer is fully assured that the sound and vibration transmissions generated by work on the Project can be maintained at or below a reasonable level and duration.

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

5. **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.

6. 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.

7. **Geotechnical Report and Review.** The Property Owner shall submit a report prepared by a geotechnical engineer of the Property Owner's choice that fully assesses the existing site conditions, and addresses all issues regarding excavation and grading, foundations and their construction, drainage, retaining wall systems, periodic on-site observations, and other related items involving the Project.

8. **Sound and Vibration Mitigation Plan and Review.** As required by the Director of Public Works, the Property Owner shall submit a plan prepared by a licensed engineer of the Property Owner's choice that fully assesses the existing site conditions for the mitigation and monitoring of vibration and decibel levels at the Project during construction (including being periodically present at the construction site during excavation and foundation work). If, in the Engineer's sole discretion, such monitoring indicates that the sound or vibration levels exceed those anticipated in the Property Owner's Construction Management Plan and/or the Sound and Vibration Mitigation Plan, all work on the Project may be immediately stopped by the City and may not resume until the City Engineer is fully assured that the sound and vibration transmissions generated by work on the Project can be maintained at or below a reasonable level and duration.

9. **Peer Review.** The City, at the Property Owner's sole expense, shall retain an independent engineering consultant to perform a peer-review of the Property Owner's Sound and Vibration Mitigation Plan and an independent geotechnical consultant to perform a peer-review of the Property Owner's geotechnical report. The engineering consultants shall advise the City in connection with the Property Owner's proposals. The City Engineer shall select the independent engineering consultant and independent geotechnical consultant, whose services shall be provided for the sole benefit of the City and whose reports and recommendations can be relied upon only by the City. The independent engineering consultant and independent geotechnical consultant shall also review the building plans during the permit approval process, and may provide periodic on-site observations during excavation and construction as deemed necessary by the City Engineer. The Property Owner shall provide payment for this at the time of the Building Permit submittal.

10. **Foundation/Shoring Excavation Plan.** The Property Owner shall submit foundation, excavation and shoring plans prepared by a structural engineer that fully address issues of site shoring, fencing and hillside security issues. The plans shall not require any trespassing or intruding into neighboring properties (without prior written consent) and shall mitigate against any subsidence or other damage to neighboring properties. Such plans shall incorporate as appropriate the recommendations of the Property Owner's geotechnical engineer and the City's geotechnical consultant, and shall be subject to approval by the City Engineer and the Chief Building Official.

11. **Neighboring Property Inspection.** With each neighbor's consent, a structural engineer (chosen by the City, and paid for by the Property Owner) shall inspect neighboring homes at 7 Muir Avenue, 11 Muir Avenue, 220 Lafayette Avenue, 361 La Salle Avenue and 345 La Salle Avenue and retaining walls with the intent of establishing base-line information to later be used in determining whether damage was

caused by any activities on Property Owner's property (including damage caused by vibrations or other factors due to excavation, construction or related activities). The inspection shall include both foundations and non-foundation related details (walls, windows, general overall condition, etc.) at a level of inspection City Staff deems appropriate. The inspection shall only include readily visible and accessible areas of the neighboring homes. The structural engineer shall provide a full report to the City of his or her conclusions, and the report may be considered in developing the Construction Management Plan. If other independent consultants or specialists are required by the City to review plans and monitor construction activity, they shall be retained at the Property Owner's cost. Before a neighbor agrees to an inspection, City will advise neighbors that the property inspection is necessarily a public record under the California Public Records Act. Within 45 days after the Certificate of Occupancy is issued on Property Owner's property, the same structural engineer chosen by the City (or a substitute structural engineer chosen by the City) shall inspect the same area in each neighboring home and property initially inspected, and shall present to the City a Report detailing any evidence of apparent damage that has been or reasonably might have been caused by activities on the Property Owner's property. The Report may include text, photographs, diagrams or other evidence that would document the apparent damage. The Report will become a public record and may be used in connection with private causes of action.

12. City Facilities Security. The Property Owner shall provide a specific cash deposit, letter of credit, bank guarantee, or other similar financial vehicle ("City Facilities Security") in the amount of \$50,000, as established by the Director of Public Works. This financial vehicle serves as an initial sum to cover the cost of any potential damage to City property or facilities in any way caused by Property Owner, Property Owner's contractors or subcontractors, or any of their agents, employees or assigns, and related in any way to the Project. The Property Owner is responsible for the full cost of repair as determined by the City Engineer prior to final inspections. The form and terms of such City Facilities Security shall be determined by the Director of Public Works after consultation with the Property Owner. The Director may take into account any of the following factors: the cost of construction; past experience and costs; the amount of excavation; the number of truck trips; the physical size of the proposed project; the logistics of construction; the geotechnical circumstances at the site; and City right-of-way and repaving costs.

a. To provide clear baseline information to assist in determining whether damage to the City's facilities has been caused by the Property Owner or others working for or on behalf of Property Owner, the City will document such facilities (including, without limitation, streets and facilities along the approved construction route as specified in the Construction Management Plan, to establish the baseline condition of the streets and facilities. The City shall further re-document the streets as deemed appropriate after the Project commences until the Director of Public Works determines that further documentation is no longer warranted. As part of the documentation, the City may water down the streets to better emphasize any cracks or damage in the surface. The Property Owner is responsible for the full cost of the documentation and repair work as determined by the City Engineer, and shall

reimburse the City for those costs prior to the scheduling of final inspection.

b. When the City Facilities Security is in a form other than cash deposit with the City, the proceeds from the City Facilities Security shall be made payable to the City upon demand, conditioned solely on the Director of Public Works' certification on information and belief that all or any specified part of the proceeds are due to the City.

13. Consultant Cost Recovery. In order to accommodate the scope and nature of the Project proposed by the Property Owner, if the Director of Public Works deems it necessary to retain independent consultants with specialized expertise, including the City Engineer, the Property Owner shall make a cash deposit with the City at the time of the Building Permit Application in the amount of \$5,000 to be used to pay for the fees and expenses of such City consultants, or in any way otherwise required to be expended by the City for professional consultant assistance. 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 fees and expenses associated with consultants retained by the City on a regular basis or specifically for the Property Owner's Project. Any unexpended amounts shall be refunded to the Property Owner within 90 days after the Project has an approved Final Inspection by the Chief Building Official.

14. 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.

15. 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.

16. Double Trailer Truck Prohibition. To reduce potential damage to the streets and to avoid traffic hazards on narrow curving city streets, no double trailers shall be used as part of the Project.

17. 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.

18. 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.

19. 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.

20. Deck Railing. The western side of the upper level deck off of the master bedroom shall have a solid railing up to the height of 42 inches.

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, Zhang

Noes: None

Absent: None

**Conditional Use Permit
1331 Grand Avenue**

Leslie Oldershaw, Licensed Acupuncturist, Inc., is requesting renewal of her conditional use permit to continue offering alternative healthcare services, including acupuncture, nutrition and herbal medicine, at 1331 Grand Avenue. A CUP for this business was granted on December 18, 2000, for a 5-year term. The application proposes the following:

Days & Hours of Operation: Monday-Friday, 9 a.m. to 9 p.m.; possibly extend hours to Saturday, 9 a.m. to 6 p.m.

On-Site Parking: 2 on-site parking spaces for staff, one shared handicap spot and 2 patient parking spaces after 5 p.m.;

Maximum Number of People Using Business at One Time: 2

Types of Personnel: 1 physician, 1 full-time staff

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

Public testimony was received from:

Leslie Oldershaw stated that she has operated her practice at the site for the last 11 years and there is no proposed change in the existing use with the exception of the option to add Saturday hours if such additional hours are necessary to accommodate her patients. She stated that most of her patients are Piedmont residents who often walk to her office and on average, she treats two patients per hour. She explained her parking lot arrangement with her landlord, Dr. Dale Herrero, and requested a 10-year permit renewal.

The Commission supported a 10-year permit renewal for this well-established business, agreeing that it provides a beneficial service to Piedmont residents with a low intensity use impact. The Commission also supported the option of providing flexibility during the permit term to add Saturday hours as requested. The applicant was encouraged to request Dr. Herrero's permission to use his parking lot for staff and patients if Saturday hours are added to the practice.

Resolution 156-CUP-12

WHEREAS, Leslie Oldershaw, Licensed Acupuncturist, Inc., is requesting a Conditional Use Permit to operate alternative healthcare services at 1331 Grand Avenue, Piedmont, California, and;

WHEREAS, the Piedmont Planning Commission has reviewed the application, the staff report, and any and all other documentation and testimony submitted in connection with the application and has visited the subject property;

The Piedmont Planning Commission makes the following findings:

1. The use is of benefit to Piedmont residents because it provides accessible healthcare services.
2. The use will be properly related to other land uses and transportation and service facilities in the vicinity. It is in a commercial zone where other medical, dental and professional services are located.
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. It is a well-established business and no polluted materials are generated.
4. The use will not be contrary to the standards established for the zone in which it is to be located. It is located in a commercial zone.
5. The use will not contribute to a substantial increase in the amount of noise or traffic in the surrounding area. There is no change in this pre-existing use.

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. This is a pre-existing use, permitted by the General Plan.

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. There are no proposed changes to the existing commercial building where the use is located.

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.

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 Ms. Oldershaw for property located at 1331 Grand Avenue, Piedmont, subject to the following conditions:

1. The term of the approval shall be 10 years from the date of permit approval;

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

Moved by Zhang, Seconded by Robertson

Ayes: Chase, Henn, Kellogg, Robertson, Zhang

Noes: None

Absent: None

The Commission recessed for dinner at 7:10 p.m. and reconvened at 7:45 p.m.

Chapter 17 Rewrite

As introduced at the Commission's June meeting, the City Planner requested public and Commission input regarding proposed changes to the definitions and regulations of public and private vehicular roadways under the City's Zoning Code (Chapter 17), especially secondary vehicular accessways such as alleys, lanes and driveways that serve

three or more properties. She provided a location map of the 24 public/semi-public and private accessways identified by staff, noting the possibility that there may be more. The City Planner outlined staff's opinion that the current 20 ft. street-side setback requirement should be reduced to 4 ft. when secondary passageways are adjacent to rear or side yards. This would modification would: (1) allow property owners the same opportunity to construct fences and garages in locations utilized by other properties that do not border secondary passageways (on the property line for fences and 4 ft. from the property line for structures); (2) reduce the need and expense for variance applications; and (3) provide the standard 4 ft. setback protection to neighboring properties. The 20 ft. setback requirement would be retained for properties that "front" on a secondary passageway to preserve the City's open streetscapes.

Correspondence was received from: Linda Roodhouse

Public testimony was received from:

Grier Graff supported staff's recommendation. He also suggested that Chapter 17 be modified to provide for a lower variance fee in instances wherein proposed construction is consistent with the neighborhood's standard setback alignment, stressing that the City's variance fee can be quite onerous on applicants.

The Commission supported staff's recommendation, requesting that proposed code amendments consider the following:

- proposed garages adjacent to secondary passageways be required to comply with the City's driveway/turnaround radius template to insure safe and functional garage ingress/egress;
- request the City Attorney to determine if there is any legal difference in code applicability to private driveways versus public alleyways;
- require the applicant to provide the burden of proof that his/her project is consistent with the development and aesthetic standards of the neighborhood;
- provide in connection with the presentation of this matter to the City Council, the number of variance applications that were required in connection with proposed construction adjacent to secondary passageways;
- include appropriate definitions to clarify that fences adjacent to vehicle access passageways are rear or side yard fences;

As a side issue, the Commission suggested that the City's Design Review Guidelines be revised to address issues relating to the storage and placement of trash and recycling containers off of secondary passageways.

**Variance, Design
Review & Fence
Design Review
339 Sea View Avenue**

Messrs. Justin Hafen and John Hurley are requesting variance, design review and fence design review for construction of a new pool and spa in the rear yard; a pool equipment enclosure on the northeast elevation of the house; modifications to an existing rear deck; new wood french doors with flanking sidelights and new lighting on the north elevation; new concrete pavers along the driveway on the west side of the property; the addition of three new gates within the three

south entrances along the front property line; and retroactive approval of a patio covering adjacent to the existing garage. The requested variance is from Section 17.10.8 to allow the patio covering to extend into the 4 ft. rear yard setback.

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

Neither the applicants nor their representative were present to discuss the application. It was further noted that the applicants have revised their patio covering proposal to eliminate the need for variance -- this patio covering was constructed by a prior owner of the property.

The Commission supported application approval, noting the large size of the property, the fact that the proposed improvements will not be readily visible to neighbors, the creation of a cohesive and attractive outdoor area and the appropriateness of a 6 ft. high fence for pool security.

Resolution 159-DR-12

WHEREAS, Messrs. Justin Hafen and John Hurley are requesting retroactive approval of a patio covering adjacent to the existing garage; a new pool and spa in the rear yard; a pool equipment enclosure on the northeast elevation of the house; modifications to an existing rear deck; new wood french doors with flanking sidelights and new lighting on the north elevation; new concrete pavers along the driveway on the west side of the property; and the addition of three new gates within the three south entrances along the front property line located at 339 Sea View Avenue, Piedmont, California, which construction requires design review; and

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

1. The exterior design elements are aesthetically pleasing as a whole and harmonious with existing and proposed neighborhood development because the proposed improvements are attractively designed and consistent with the existing architecture.
2. The design is appropriate, considering its effect on neighboring properties' existing views, privacy and access to direct and indirect light because of the existing landscaping screening and the low height of the proposed improvements. There is no significant impact on neighboring properties.
3. The safety of residents, pedestrians, and vehicle occupants and the free flow of vehicular traffic are not adversely affected, considering the circulation pattern, parking layout and points of ingress and egress. The driveway gate will have an electronic opener to facilitate vehicle ingress/egress to the garage.

4. The project complies with Design Review Guidelines II-1, IV-1, V-1, V-2 and V-5.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review application of Messrs. Hafen and Hurley for construction at 339 Sea View 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.

c. If the work for any specific benchmark has not been completed within 90 days after the completion date set forth in the Approved Schedule, and the delay in completion has not been caused by force majeure, the Director of Public Works has the option at any time thereafter to make a claim against the Property Owner's Performance Security, if one is required, in order to complete the benchmark.

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

4. **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. **Final Landscape Plan.** Before issuance of a building permit, the Property Owner shall submit for staff review and approval a Final Landscape Plan. The final plan shall comply with Municipal Code Section 17.17.3, and shall not propose plants near the driveway that could obscure visibility of pedestrians on the sidewalk or vehicles on the street from drivers backing out of the driveway.

6. **Approved Plan Set.** The approved plans are those submitted on June 8, 2012, with revised sheets submitted on June 22, July 2, 3 and 5, 2012, after neighbors were notified of the project and the plans were available for public review;

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

Moved by Henn, Seconded by Robertson

Ayes: Chase, Henn, Kellogg, Robertson, Zhang

Noes: None

Absent: None

**Variance and
Design Review
120 Ronada Avenue**

Mr. and Mrs. Paul Gerken are requesting variance and design review to demolish the existing garage and attached workshop located in the rear yard; construct a new 379 sq. ft. 1-car garage at the southwest corner of the property including new roof-mounted skylights and exterior light

fixtures on its front facade; construct a new 233 sq. ft. 1-car carport at the southeast corner of the property; and make hardscape changes including the replacement of the concrete driveway turnaround with pervious pavers. The requested variances are from: (1) Section 17.10.7 to allow the new garage to extend to within 6'8" of the right (west) side property line in lieu of the Code required minimum of a 4 ft. side yard setback; (2) Section 17.10.7 to allow the new carport to extend to within 1 inch of the left (east) side property line in lieu of the Code required minimum of a 4 ft. side yard setback; (3) Section 17.10.8 to allow the new garage to extend to within 1 inch of the rear property line in lieu of the Code required minimum of a 4 ft. rear yard setback; and (4) Sections 17.32.3 & 17.32.6 to allow a residence with 5 rooms eligible for use as bedrooms with 2 conforming off-street parking spaces in lieu of the Code required minimum of 3 such spaces.

A similar application was denied by the Commission on September 12, 2011.

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

Public testimony was received from:

Grier Graff, Project Architect, described the design changes made to the project in response to last September's meeting, stating his belief that a special exception rather than parking variance is appropriate given that the property's off-street parking non-conforming is being reduced -- currently the property has 1 non-conforming parking space and the proposal will create 2 conforming spaces.

The Commission supported application approval, agreeing that the revised design is responsive to Commission requests, there is ample room on the property for additional off-street parking, albeit uncovered and tandem, and given the property's odd-shaped configuration, the proposed location of the garage and carport is appropriate and logical. The Commission also agreed that a parking special exception, rather than variance, was appropriate in this case given that the property's existing parking related non-conformity is being significantly reduced. The Commission requested, however, that the driveway be modified to include a center grass planting strip extending from the existing planter bed to the pervious pavers.

Resolution 127-V/DR-12

WHEREAS, Mr. and Mrs. Paul Gerken are requesting permission to demolish the existing garage and attached workshop located in the rear yard; construct a new 379 sq. ft. 1-car garage at the southwest corner of the property including new roof-mounted skylights and exterior light fixtures on its front facade; construct a new 233 sq. ft. 1-car carport at the southeast corner of the property; and make hardscape changes including the replacement of the concrete driveway turnaround with pervious pavers located at 120 Ronada 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 rear

(south) yard setback; construct within the right (west) side yard setback; and construct within the left (east) side yard setback.

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 has a very narrow "L" shaped corner which extends behind a neighboring garage. Therefore, it is logical to place the proposed conforming garage in this area which is within the setback. 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 it allows the applicants to comply in principle with the zoning requirements for enclosed, accessible off-street parking spaces in a location with no material impact on neighboring properties. Thus, reducing on-street parking congestion for neighbors. In addition, a special exception pursuant to Section 17.20.6(a) is warranted because the proposed project creates two conforming parking spaces, plus storage area, inside a garage on a property which currently has only 1 non-conforming off-street parking space.
4. Accomplishing the improvement without variance would cause unreasonable hardship in planning, design, or construction for the reasons cited in finding #2; it would prevent the applicants from effectively using their property; require the construction of a garage in the middle of the rear yard with a substantial driveway for ingress/egress; and diminish light, view and open space for the overall community.
5. The proposal conforms with the criteria and standards of Section 17.20.9 of the Piedmont City Code and complies with Design Review Guidelines II-1, II-2, II-3(a), III-1, III-1(a), III-2, III-3, III-5, III-5(a), III-6, III-7 and III-7(a).
6. The exterior design elements are aesthetically pleasing as a whole and harmonious with existing and proposed neighborhood development in that the location, style, materials and detailing of the proposed garage and carport are consistent with the architectural style of the residence.
7. The design is appropriate, considering its effect on neighboring properties' existing views, privacy and access to direct and indirect light because the proposed garage is directly adjoining the neighbor's existing garage, utilizes a peculiar area of the property in a constructive manner and is compatible in size, location and mass with the neighbor's adjoining garage. The proposed carport is designed as an open,

architectural feature that has no impact on neighbor light, view or privacy.

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 provides two conforming off-street parking spaces as well as an additional covered parking space with adequate driveway ingress/egress and no change in the existing curb-cut on Ronada Avenue.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves variances and design review for Mr. and Mrs. Gerken's proposed construction at 120 Ronada Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

1. **Sewer Condition and Repair.** Prior to the issuance of a building permit and any excavation and/or foundation work for the new garage, the applicants shall work with City staff to verify the location and depth of the sanitary sewer main located on the adjacent properties at the rear and videotape the existing sewer main and any laterals. City staff shall review said videotape to determine the pre-construction condition of the sewer main and whether any repairs to or replacement of the sewer main is required prior to the commencement of excavation and/or construction. As part of the final inspection the same sewer line shall be inspected as required by the Director of Public Works, who shall also determine if the sewer line was damaged as a result of the construction and therefore must be repaired at the applicant's expense.

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. **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. **Property Line Location Verification.** Prior to foundation and/or frame inspection, the rear and west property lines shall be located and marked by a licensed land surveyor or civil engineer in order to verify that the garage is constructed at the approved dimension from the property lines.

5. **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.

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. Driveway. The existing driveway shall be modified to add a center planting strip, extending from the existing planting strip to the south until it meets the edge of the new pervious pavers.

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 Zhang

Ayes: Chase, Henn, Kellogg, Robertson, Zhang

Noes: None

Absent: None

ADJOURNMENT

There being no further business, Chairman Chase adjourned the meeting at 9:15 p.m.

