

## **PIEDMONT PLANNING COMMISSION**

### **Regular Meeting Minutes for Tuesday, November 12, 2013**

A Regular Session of the Piedmont Planning Commission was held November 12, 2013, 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 October 28, 2013.

#### **CALL TO ORDER**

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

#### **ROLL CALL**

Present: Commissioners David Hobstetter, Susan Ode, Tony Theophilos, Tom Zhang and Alternate Commissioner Louise Simpson

Absent: Commissioner Phillip Chase (excused)

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

City Council Liaison: Councilmember Garrett Keating

#### **PUBLIC FORUM**

There were no speakers for the public forum.

#### **CONSENT CALENDAR**

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

##### **Design Review 61 King Avenue**

##### **Resolution 297-DR-13**

WHEREAS, the Property Owner is requesting permission to construct an approximately 367 sq. ft. upper level addition and raise the existing chimney at the northwest corner of the residence; construct a new barbeque counter at the southeast corner of the rear patio; make modifications to doors and windows throughout the house; make exterior lighting modifications throughout the house; and make various changes to the interior located at 61 King Avenue, Piedmont, California, which construction requires design review; and

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

1. The exterior design elements are aesthetically pleasing as a whole and harmonious with existing and proposed neighborhood development. The distance between the proposed upper level addition and adjacent residences is reasonable and appropriate due to the existing topography and neighborhood development pattern. Upper level setbacks greater than the setbacks required for the lower level have been considered and are not necessary to reduce losses of ambient and reflected light. There is no visual impact from the street, the stucco exterior wall matches existing walls, the new hip roof matches the existing roof line and the decks do not overpower or appear tacked on in appearance.
2. The proposed upper level addition has been designed in a way that reasonably minimizes view and light impacts on neighboring properties because the project has been designed to minimize its impact on adjacent properties and the corresponding wall on the adjacent neighbor's home does not have any

windows or other openings. The proposed addition is screened by existing vegetation between the two properties further mitigating the addition's impact.

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 decks and outdoor spaces are typical for the neighborhood and do not appear or feel tacked on.

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 upper level addition, and additional parking is not required to prevent unreasonable short and/or long term parking impacts on the neighborhood. There is very limited change to existing circulation and traffic patterns.

5. The project complies with Design Review Guidelines I-1, I-1(b) through (d), II-1, II-2, II-3(a) through (d), II-5, II-5(a) and II-6(a) & (b).

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review application for construction at 61 King 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. **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 (benchmark).

a. The Construction Completion Schedule with associated construction values for each benchmark shall set forth completion dates for the following benchmarks:

- i. Completion of Excavation;
- ii. Completion of Retaining Walls;
- iii. Completion of Foundation;
- iv. Completion of Rough Framing;
- v. Completion of Electrical;
- vi. Completion of Plumbing;
- vii. Completion of Mechanical;

- viii. Completion of Fire Sprinklers;
- ix. Completion of Home;
- x. Completion of Hardscaping and Landscaping; and
- xi. any further construction benchmarks and conditions of occupancy as may be determined by the Director of Public Works.

b. Before the Project begins, the Director of Public Works shall make a determination as to the reasonableness of the proposed completion dates applicable to the Project, and that determination shall constitute the "Approved Schedule" and be binding on the Property Owner. The City may, at the Property Owner's sole cost, engage the services of a consultant to review the Property Owner's proposed Construction Completion Schedule and, to the extent the period allocated for any work appears unjustifiable, recommend to the Director of Public Works a reasonable completion date for any benchmark.

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

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

4. **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. **Property Line Location.** A licensed land surveyor shall be required by the Building Department to verify and mark the location of the north property line at the time of foundation and/or frame inspection to verify the approved setback dimension measured to the new construction.

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

Moved by Ode, Seconded by Theophilos

Ayes: Hobstetter, Ode, Theophilos, Zhang, Simpson  
Noes: None  
Absent: Chase

#### APPROVAL OF MINUTES

##### **Resolution 13-PL-13**

RESOLVED, that the Planning Commission approves as submitted its meeting minutes of October 14, 2013.

Moved by Hobstetter, Seconded by Theophilos

Ayes: Hobstetter, Ode, Theophilos, Zhang, Simpson  
Noes: None  
Absent: Chase

##### **Resolution 14-PL-13**

RESOLVED, that the Planning Commission approves as submitted its special meeting minutes of October 30, 2013.

Moved by Ode, Seconded by Theophilos

Ayes: Hobstetter, Ode, Theophilos, Zhang, Simpson  
Noes: None  
Absent: Chase

#### REGULAR CALENDAR

The Commission considered the following items of regular business, after agreeing by a procedural motion made by Commissioner Theophilos, seconded by Commissioner Hobstetter and carried, to reorder agenda consideration:

##### **New House Variance, Design Review and Retaining Wall Design Review 111 Ramona Avenue**

The Property Owners are requesting variance, design review (new house) and retaining wall design review to demolish the existing 922 sq. ft. house and construct a new 2-story house; remodel and expand the existing 1-car garage with a new attached 1-car carport. The new house is proposed to have 1,935 sq. ft. of habitable space that includes 3 bedrooms, 2 full bathrooms, 1 half bathroom, a living-dining-kitchen great room, and office. Proposed exterior features include windows and doors throughout, skylights, exterior lighting and landscape and hardscape modifications including a new driveway gate and retaining walls along the front driveway and entry path. The requested variance is from Section 17.10.7 to allow the expanded garage to extend to within 4 in. of the west side property line in lieu of the code required minimum of a 4 ft. side yard setback. A similar application was denied without prejudice by the Commission on April 8, 2013.

Written notice was provided to neighbors. **Twelve affirmative response forms** were received. **Correspondence** was received from: Ellen Garrett

**Public testimony** was received from:

Ed Alazraqui acknowledged the Commission's intention to place approval of his application on tonight's *Consent Calendar* but requested that the Commission refund the variance fee paid with this second application. He referenced the Commission's April 8, 2013, determination that the variance for the garage was justified but could not be approved at that time because there was no approved design. The Commission agreed to this fee waiver request, complimenting Mr. Alazraqui on the fact that his revised design is very responsive to Commission and neighbor requests and reflects a great improvement over the previous submittal.

##### **Resolution 301-V/DR-13**

WHEREAS, the Property Owner is requesting permission to demolish the existing 922 sq. ft. house and construct a new 2-story house; remodel and expand the existing 1-car garage with a new attached 1-car carport. The new house is proposed to have 1,935 sq. ft. of habitable space that includes 3 bedrooms, 2 full bathrooms, 1 half bathroom, a living-dining-kitchen great room, and office. Proposed exterior features include windows and doors throughout, skylights, exterior lighting and landscape and hardscape modifications including a new driveway gate and retaining walls along the front driveway and entry path located at 111 Ramona Avenue, Piedmont, California, which construction requires variance and design review; and

WHEREAS, a variance from the requirements of Chapter 17 of the Piedmont City Code is necessary in order to construct the new garage expansion within the 4 ft. left (west) side yard setback; and

WHEREAS, after reviewing the application, plans and any and all testimony and documentation submitted in connection with such application, and after having visited subject property, the Piedmont Planning Commission finds that the project is categorically exempt under the California Environmental Quality Act, pursuant to Sections 15301, Class 1(1) and 15303, Class 3(a) and the proposal conforms with the criteria and standards of Sections 17.21.1 and 17.20.9 of the Piedmont City Code:

1. The underlying lot and existing improvements present unusual physical circumstances, including but not limited to the fact that the lot is extremely small, garage placement within the setback is consistent with neighborhood conditions and garage expansion will not adversely impact the neighborhood, traffic patterns or pedestrian use. Because of these circumstances, strictly applying the terms of this chapter would keep the property from being used in the same manner as other properties in the zone which conform to the zoning requirements.
2. The variance is compatible with the immediately surrounding neighborhood and the public welfare because it is completely consistent with the neighborhood and will enable a larger space for off-street parking.
3. Accomplishing the improvement without a variance would cause unreasonable hardship in planning, design, or construction because the limited size of the lot precludes garage location in any other place.
4. The exterior design elements, as revised from an earlier submittal, are aesthetically pleasing as a whole and harmonious with existing and proposed neighborhood development. The distance between the proposed new multi-level structure and adjacent residences is reasonable and appropriate due to the existing topography and neighborhood development pattern. Upper level setbacks greater than the setbacks required for the lower level have been considered and are not necessary to reduce losses of ambient and reflected light. The revised design has the full support of neighboring residents, has incorporated appropriate and attractive Craftsman-style architectural details and has significantly reduced the impact of the proposed construction on adjacent properties from that previously presented.
5. The proposed new multi-level structure has been designed in a way that reasonably minimizes view and light impacts on neighboring properties (as

defined in Section 17.2.70). The revised design has successfully mitigated concerns raised by neighbors and now has the full support of neighboring residents.

6. The size and height of the new house 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 proposed project has been well designed for this extremely small lot.

7. 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 proposed on-site parking is appropriate to the size of the new home and additional parking is not required to prevent unreasonable short and/or long term parking impacts on the neighborhood. The project expands the existing garage to accommodate two off-street parking spaces.

8. The second variance fee paid in connection with this project should be waived/refunded since the Commission was in support of granting this side yard variance on April 8th but was precluded from doing so because there was no approved design associated with the variance application. The applicant was advised by the Commission at that time that if a revised design was submitted which included a setback variance for a second parking space, the Commission would favorably consider refunding the variance fee associated with such a submittal.

9. The project complies with Design Review Guidelines I-1, I-1(a) through (d), I-2, I-3, I-4, I-6, I-7, I-8, I-9, I-10, I-11, I-12, III-1, III-2, III-3, III-4, III-5, III-6, III-7, IV-1, IV-3 and IV-6

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the variance and design review application for construction at 111 Ramona 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, site safety security 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. Construction Site Control of Stormwater. The California Regional Water Quality Control Board requires all projects that disturb the site to comply with Provision C.6 of the San Francisco Bay Regional Stormwater NPDES Permit in order to prevent construction site discharges of pollutants and other regulated materials during construction. As required by the Chief Building Official and prior to the issuance of a building permit, the Applicant shall develop and submit a construction stormwater management plan as part of the Construction Management Plan to achieve

timely and effective compliance with Provision C.6. Permit Provision C.6.c.ii provides sources for site specific, and seasonally- and phase-appropriate, effective Best Management Practices (BMPs) that may be incorporated into the stormwater management plan. Copies of the Municipal Regional Stormwater Permit are available from the Piedmont Public Works Department and on-line at [cleanwaterprogram.org](http://cleanwaterprogram.org).

b. New Construction. Pursuant to Section 17.32.6 of the Municipal Code the building shall conform to new building and planning Code requirements.

c. 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.

2. **Environmental Hazards**. Prior to the issuance of a building permit as required by the Chief Building Official, the applicant shall provide a plan, including necessary testing, to verify compliance with all local, state and federal regulations regarding the disturbance and removal of hazardous materials (if any) on residential properties and/or in the proximity of schools, including lead-based paint and asbestos. Said plan for the proper removal and handling of hazardous materials shall be provided on the appropriate sheets of the construction plan sets and included in the Construction Management Plan.

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 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 Site Security, if one is required, in order to complete the benchmark. The Director of Public Works has the option to refer the application to the Planning Commission for public review.

4. **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 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 an endorsement requiring notice to the City if the insurance is cancelled or changed, and Property Owner shall immediately arrange for substitute insurance coverage. If the Property Owner does not have a general contractor, the Property Owner shall maintain property insurance and coverage for contractors, which is substantially equivalent to the contractor’s requirement of this section.

5. **BAAQMD Compliance.** The applicant shall comply with the Bay Area Air Quality Management District regulations related to any building demolition. The Demolition Notification form is available on their website at [www.BAAQMD.gov/forms](http://www.BAAQMD.gov/forms).

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

7. **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.

8. **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.

9. **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.

10. **Property Line Location.** A licensed land surveyor or civil engineer shall be required by the Building Department to verify and mark the location of the east, west and south property lines at the time of foundation and/or frame inspection to verify the approved setback dimension measured to the new construction.

11. **Stormwater Design.** The California Regional Water Quality Control Board requires all projects, or a combination of related projects, that create and/or replace 2,500 square feet or more of impervious surface to comply with Provision C.3.i of the Municipal Regional Stormwater NPDES Permit. As required by the Chief Building Official, the Property Owner shall verify the total area of impervious surface to be created and/or replaced within the scope of this project, or this project combined with other related projects and/or permits, and incorporate the site design measure(s) required under Provision C.3.i into the plans submitted for a building permit. Copies of the Municipal Regional Stormwater Permit are available from the Piedmont Public Works Department and on-line at [cleanwaterprogram.org](http://cleanwaterprogram.org).

12. **Final Landscape Plan.** Before issuance of a building permit, the Property Owner shall submit for staff review and approval a Final Landscape Plan that shows trees proposed for retention as well as in-lieu trees required by a Certified Tree Preservation 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.

13. **Arborist's Report.** Before the issuance of a building permit, the Property Owner shall submit an Arborist's Report that includes tree preservation measures to preserve existing trees proposed to remain on-site, as well as any nearby off-site trees, particularly the oak tree near the east property line on the adjacent property at 115 Ramona Avenue. The tree preservation measures shall be on the appropriate sheets of the construction plans. The arborist shall be on-site during critical construction activities, including initial and final grading, to ensure the protection of the existing trees. The arborist shall document in writing and with photographs the tree protection measures used during these critical construction phases. If some trees have been compromised, mitigation measures must be specified in writing, and implementation certified by the Project Arborist. Trees proposed for removal shall have an in-lieu replacement tree planted elsewhere on the property, which shall be shown on the final landscape plan. Before the Final Inspection, the Arborist shall file a report to the City certifying that all tree preservation measures as recommended have been implemented to his/her satisfaction and that all retained trees have not been compromised by the construction.

14. **Certified Tree Preservation Plan.** Before the issuance of a building permit, the Property Owner shall prepare for review and approval by staff a Tree Preservation Plan that incorporates the tree preservation measures recommended in the Arborist's Report prepared for compliance with condition #13 above. The tree preservation measures shall be on the appropriate sheets of the construction plans. The arborist shall be on-site during critical construction activities, including initial and final grading, to ensure the protection of the existing trees. The arborist shall document in writing and with photographs the tree protection

measures during these critical construction phases. If some trees have been compromised, mitigation measures must be specified in writing, and implementation certified by the Project Arborist.

Trees proposed for removal shall have an in-lieu replacement tree planted elsewhere on the property, which shall be shown on the final landscape plan. Replacement tree size is subject to staff review, and shall be commensurate with the size and numbers of trees to be removed. They shall generally be a minimum of 24" box size.

Before the Final Inspection, the Arborist shall file a report to the City certifying that all tree preservation measures as recommended have been implemented to his/her satisfaction and that all retained trees have not been compromised by the construction.

**15. Foundation/Shoring/Excavation Plan.** As required by the Chief Building Official, the Property Owner shall submit foundation, excavation, and shoring plans prepared by a licensed civil or 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.

**16. Geotechnical Report and Review.** As required by the Chief Building Official, 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.

a. **Peer Review.** The City, at the Property Owner's sole expense, shall retain an independent geotechnical consultant to perform a peer-review of the Property Owner's geotechnical report and advise the City in connection with the Property Owner's proposals. The City Engineer shall select this 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 geotechnical consultant shall also review the building plans during the permit approval process, and may provide periodic on-site observations during excavation and construction of the foundations as deemed necessary by the City Engineer. The Property Owner shall provide payment for this at the time of the Building Permit submittal.

**17. Sound and Vibration Mitigation Plan and Review.** As required by the Chief Building Official, 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.

a. 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 advise the City in connection with the Property Owner's proposals. The City Engineer shall select this independent engineering 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 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.

**18. 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 \$25,000 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.

**19. 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.

20. **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 such cash deposit has been reduced to \$2,500.00 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.

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

- a. The Site Safety Security shall be in an amount to include three components:
  - i. safety, which means the cost to make the site and structure safe if construction should cease mid-way through the Project;
  - ii. aesthetics, which means an amount to install and maintain landscaping all around the Project to protect the immediate local views from neighbors and public property; and
  - iii. staff and consultant time to evaluate and implement this condition.

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

- b. The form and amount of the Site Safety Security is subject to the approval of the Director of Public Works. Payment to City under the Site Safety Security shall be made payable upon demand by the City and prior to the issuance of the Building Permit, conditioned solely on the Director of

Public Works' certification on information and belief that all or any specified part of such Performance Security is due to the City.

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

22. **Eave.** The eave of the garage shall comply with California Residential Code (CRC) Section R302.1.4 and shall have a uniform projection from the wall on both sides of the structure. Design modifications necessary for compliance shall be subject to staff review and approval.

23. **Landscaping.** The applicants shall retain the existing camellia bushes between the new house and the house at 115 Ramona Avenue or supply similar vegetation in the same location.

24. **Variance Fee.** The Commission waives the second variance fee paid in connection with this project.

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

Moved by Simpson, Seconded by Theophilos

Ayes: Hobstetter, Ode, Theophilos, Zhang, Simpson

Noes: None

Absent: Chase

#### **Pedestrian and Bicycle Master Plan**

Niko Letunic of Eisen/Letunic, the transportation and planning consulting firm that has been retained to prepare the City's Pedestrian and Bicycle Master Plan, reported on (i) the October 30 community workshop held for the purposes of receiving public input regarding the City's Pedestrian and Bicycle Master Plan; (ii) the results to-date of an on-line survey to solicit additional public input; and (ii) the six Safe Routes to School walking audits. He stated that Task 1 of the project has now been completed (inventory of existing conditions) and the resulting briefing paper and map are posted on the City's website. Task 2 (assessment of needs) is in progress. The needs assessment is achieved through extensive outreach efforts involving an on-line survey, community workshop, walking audits, letters of support submitted in connection with the City's grant application, Commission public hearings and e-mails, comments and correspondence from the public. The concerns, requests and suggestions submitted in response to the outreach effort will be compiled and evaluated in preparation for the formulation of a draft report proposing physical improvements, programs and policies to improve walking and biking within the City (Task 3).

**Public testimony** was received from:

City Councilmember Keating requested Mr. Letunic to explain how the Pedestrian and Bicycle Master Plan will be integrated with the City's Complete Streets Policy, Street Paving Program and Sidewalk, Curb and Gutter improvements in terms of funding and prioritization. Mr. Letunic complied with this request.

Terisa Whitted inquired on behalf of her son, who is president of the PHS Bike Club, if students can help fund raise for the purchase of bike racks. Mr. Letunic anticipated that community groups and individuals will likely be actively involved in the funding and implementation of many of the Master Plan's recommendations.

The Commission briefly discussed various aspects of plan preparation and the types of infrastructure improvements and policy recommendations that may be contained in the Master Plan. The Commission agreed that the October 30 community workshop was very well attended and informative and requested that the Commission be advised in advance of the date of the next community workshop.

**Conditional Use Permit  
1337 Grand Avenue**

JumpstartMD is requesting a conditional use permit to operate a weight loss and counseling business in the suite previously occupied by Torrey Pines Bank and Kraft Automotive at 1337 Grand Avenue. The application proposes the following:

*Days & Hours of Operation:* Tuesday 7:00 a.m. to 1:30 p.m.; Wednesday 3:00 p.m. to 6:30 p.m.; Thursday 7:00 a.m. to 1:30 p.m.; Friday 7:00 a.m. to 1:30 p.m.; Saturday 7:00 a.m. to 12:30 p.m. Closed Sundays and Mondays

*Types of Staff/Personnel:* 1 clinician manager, 5 program counselors, 1 receptionist

*Maximum No. of People Using the Business at One Time:* 6 to 9, 5 employees, 3-4 customers/clients

*Number of On-Site Parking Spaces:* 6 - visitors

Written notice was provided to neighbors. **Two affirmative response forms** were received. **Correspondence** was received from: Matt Newcomer; Patrick Ellwood

**Public testimony** was received from:

Matt Newcomer, JumpstartMD Operations Executive, and Dr. Conrad Lai, Co-Founder and Chief Operating Officer, stated that the firm was started 6 years ago by two Stanford physicians who were concerned over the health risks associated with obesity. The company has 9 locations in the Bay Area, several of which are in communities and location sites similar to that proposed for Piedmont. The target demographic group of the weight loss counseling services to be offered are adults between the age of 40 and 60, primarily from Piedmont and the Oakland Hills area -- several Piedmont residents are currently obtaining counseling services from the Walnut Creek office. Mr. Newcomer added that the parking lot would be reserved for clients, with staff utilizing public

transportation and/or parking in the Linda Avenue area. He also stressed that there would be very limited overlap with other businesses in the building/area given the firm's early morning and limited hours of operation, thus minimizing traffic/parking congestion.

Jack Frater supported permit approval, believing that the health care services offered by JumpstartMD are a good fit for Piedmont.

Patrick Ellwood, Building landlord, was available for questions.

Commissioners Hobstetter and Simpson voiced concern that the target group of Piedmont residents who would benefit from the proposed business was too small, noting their preference that Piedmont's limited commercial sites be filled with businesses that provide services to families and youths. Dr. Lai and Mr. Newcomer countered that teaching parents/family member adults proper nutrition and healthy eating habits and lifestyles provide children with good role models as well as reduce the risk that these children could prematurely lose loved ones. In addition, the company has a proven track record of supporting community events, causes and schools. Commissioners Ode, Theophilos and Zhang supported application approval, believing that (i) the use was appropriate and consistent with other uses in the Grand Avenue business district; (ii) reflected a low intensity use in terms of noise, parking and traffic; (iii) was consistent with the City's General Plan; (iv) would serve the health needs of Piedmont residents; and (v) was an acceptable professional operation. As a condition for supporting application approval, Commissioners Hobstetter and Simpson requested that the company be required on a pro bono basis to partnership with the School District in sponsoring activities and/or programs addressing youth obesity. Commissioner Theophilos objected to this condition, citing his belief that the Commission should not dictate how a company operates its business, noting that other businesses in Piedmont have not been required to offer pro bono services to the community -- he preferred that community services be voluntary on the part of local businesses.

**Resolution 294-CUP-13**

WHEREAS, JumpstartMD is requesting a Conditional Use Permit to operate a weight loss and counseling business in the suite previously occupied by Torrey Pines Bank and Kraft Automotive at 1337 Grand Avenue, Piedmont, California, and;

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

The Piedmont Planning Commission makes the following findings:

1. The project is categorically exempt under the California Environmental Quality Act, pursuant to Section 15301, Class 1(e)
2. As conditioned, the use will benefit Piedmont residents of all ages. The proposed use addresses an important health issue and Piedmonters will take advantage of this health care service.
3. The use will be properly related to other land uses and transportation and service facilities in the vicinity, including consideration of how many similar,

nearby uses exist: including Sylvan Learning Center, dentist offices, acupuncture and other health care businesses and exercise facilities.

4. Under all the circumstances and conditions of the particular case, the use will not have a material adverse effect on the health or safety of persons residing or working in the vicinity. There is adequate on-site parking to accommodate business customers and staff will be encouraged to use public transportation and/or park on streets in less congested areas.

5. The use will not be contrary to the standards established for the zone in which it is to be located. The use is similar to other businesses with conditional use permits in the area, including the health care providers mentioned above.

6. The use will not contribute to a substantial increase in the amount of noise or traffic in the surrounding area. Grand Avenue is an existing thoroughfare.

7. The use is compatible with the General Plan and will not adversely affect the character of the surrounding neighborhoods or tend to adversely affect the property values of homes in the surrounding neighborhoods. All activity will be focused on the business street, with minimal on-street parking impact.

8. Adequate provision for driveways to and from the property has been made; facilities for ingress and egress from secondary streets instead of arterials, where possible, have been made; provision for parking in compliance with this Chapter 17 has been made, together with sufficient agreements to enforce the carrying out of such plans as may be required by the Council. The use is located in an existing commercial building in a space previously occupied by a business.

9. The plans conform to all other laws and regulations of the City, provided, however, that the Council shall have the right to require front, rear and side yard setbacks greater than those otherwise provided in the laws and regulations of the City if the Council finds that such larger front, rear and side yard areas are necessary to provide for the health, safety and general welfare of the residents of Piedmont in accordance with its zoning laws.

RESOLVED, that in consideration of the findings and facts set forth above, the Piedmont Planning Commission recommends approval by the City Council of the application for a conditional use permit by JumpstartMD for property located at 1337 Grand Avenue, Piedmont, subject to the following conditions:

1. **Terms.** The terms of the approval are as stated in the application, specifically including the following:

- Days and Hours of Operation: Monday: Closed; Tuesday: 7:00 a.m. to 1:30 p.m.; Wednesday 3:00 p.m. to 6:30 p.m.; Thursday 7:00 a.m. to 1:30 p.m.; Friday 7:00 a.m. to 1:30 p.m. and Saturday 7:00 a.m. to 12:30 p.m.
- Type(s) of Staff/Personnel, Number of Each: 1 clinician manager, 5 program counselors, 1 receptionist
- The approval shall be for 5 years

2. **Approved Plans.** The approved application and plans are those submitted on October 10, 2013, with additional revisions and documents submitted on October 25th and October 28th.



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

4. **Sponsorship.** The applicant is required to seek partnerships with the Piedmont School District in sponsoring programs that address obesity issues of Piedmont residents under the age of 16.

Moved by Ode, Seconded by Hobstetter

Ayes: Hobstetter, Ode, Zhang, Simpson

Noes: Theophilos

Absent: Chase

Councilmember Keating advised JumpstartMD that it should reach out to the PHS Wellness Center in complying with Condition #4; adding, however, that the primary health concern in Piedmont is cancer and not obesity.

#### **ANNOUNCEMENT**

December 9th Meeting -- the City Planner announced that a report on how well the City is complying with its current Housing Element will be presented at the December meeting.

#### **ADJOURNMENT**

There being no further business, Chairman Zhang adjourned the meeting at 6:40 p.m.