

PIEDMONT PLANNING COMMISSION

Regular Meeting Minutes for Monday, October 14, 2013

A Regular Session of the Piedmont Planning Commission was held October 14, 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 September 30, 2013.

CALL TO ORDER

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

ROLL CALL

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

Staff: City Planner Kate Black, Assistant Planner Kevin Jackson, Planning Technicians Jennifer Feeley and Janet Chang, Assistant City Attorney Judith Robbins, and Recording Secretary Lisa Argue.

CONSENT CALENDAR

There were no items on the Consent Calendar.

PUBLIC FORUM

Rick Schiller voiced support of the letter in the Piedmonter submitted by Garrett Keating. Ron Heckmann thanked the Commission for its work on his neighbor's fence design review and is working with his neighbor on pursuing alternative ideas offered by the Commission on same.

APPROVAL OF MINUTES

Resolution 11-PL-13

RESOLVED, that the Planning Commission approves as submitted its meeting minutes of September 9, 2013.

Moved by Ode, Seconded by Hobstetter

Ayes: Hobstetter, Ode, Simpson, Zhang

Noes: None

Recused: Chase, Theophilos

Absent: None

Resolution 12-PL-13

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

Moved by Hobstetter, Seconded by Ode

Ayes: Chase, Hobstetter, Ode, Simpson, Theophilos, Zhang

Noes: None

Absent: None

REGULAR CALENDAR

The Commission considered the following items of regular business:

Housing Element

City Consultant Barry Miller presented the proposed scope of work and timetable for the update of the City's General Plan Housing Element. This included presenting the definition of the Housing Element, the Regional Housing Needs Allocation, Piedmont's Housing Element History, an overview of Needs, Sites, and Constraints, Existing Goals, Policies, and Actions, and Next Steps.

Alternate Commissioner Simpson excused herself from the meeting.

Design Review

The Property Owner is requesting design review to remove a basement-level

1900 Oakland Avenue window, modify the three windows in the bay on the front facade and make various changes to the interior.

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

Public testimony was received from:

Grier Graff, architect for the applicant, presented an overview of the project and answered questions from Commissioners Ode and Zhang regarding details of the windows.

Resolution 258-DR-13

WHEREAS, the Property Owner is requesting permission to remove a basement-level window, modify the three windows in the bay on the front facade and make various changes to the interior located at 1900 Oakland 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 as conditioned, the project is approved because it complies with the design review criteria under Section 17.20.9 as follows:

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 new windows are harmonious with existing development.
2. The design is appropriate, considering its effect on neighboring properties' existing views, privacy and access to direct and indirect light because it does not impact these items of 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 because it has no impact on these items.
4. The project complies with Design Review Guidelines II-1, II-2, II-3(a), II-3(b), II-3(c), II-3(d), II-4, II-5, II-6.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review application for construction at 1900 Oakland Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

1. **Construction Management Plan.** The Property Owner shall develop a comprehensive Construction Management Plan. The Construction Management Plan shall address noise, vibrations, traffic control, parking, debris

removal, dust control, sanitary facilities, and other potential construction impacts, as well as other details involving the means and methods of completing the Project, including the construction route. The City Building Official has the authority to require modifications and amendments to the Construction Management Plan as deemed necessary throughout the course of the Project and until the Final Inspection.

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

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

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

Moved by Theophilos, Seconded by Chase
Ayes: Chase, Hobstetter, Ode, Theophilos, Zhang
Noes: None
Absent: None

**Design Review
121 Ricardo Avenue**

The Property Owner is requesting design review to replace an existing rear sliding door and window with a new sliding door, window and panel; add exterior lighting; make various window modifications to the rear (west) and right (north) side elevations; and make various interior improvements.

Written notice was provided to neighbors. **One affirmative response form** were received. **Correspondence** was received from: Nancy Roscelli and Steve Baronian, Joe Loduca.

Public testimony was received from:

Jeff Prose, architect for the applicant, outlined the scope of the project as part of a whole house remodel, and answered questions from the Commission regarding options of connecting the interior of the house with the backyard, choice of materials, and comparison with other projects with similar challenges.

Rajeev Ranga, owner of the property, expressed his excitement about completing the project so that his new young family can move in. He has spoken with his new neighbors who voiced their support of the project.

The Commission discussed at length the garage on the property. House file review suggests that the garage doors on the current garage structure, while operable, may not be original and may not have been installed with proper permitting. As such, according to provisions in the Building Code, further work cannot be permitted until past noncompliant work is brought into Code compliance. However, there is no definitive proof that the doors are not the originals. Further discussion ensued as to how to proceed with the project as proposed while being sensitive to the garage issue. The Commission determined that the garage doors were original.

Resolution 261-DR-13

WHEREAS, the Property Owner is requesting permission to replace an existing rear sliding door and window with a new sliding door, window and panel; add exterior lighting; make various window modifications to the rear (west) and right (north) side elevations; and make various interior improvements located at 121 Ricardo 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 as conditioned, the project is approved because it complies with the design review criteria under Section 17.20.9 as follows

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 architect has vastly improved a house that is not as aesthetically pleasing in its current state and the design improvements have no impact on the neighbors.
2. The design is appropriate, considering its effect on neighboring properties' existing views, privacy and access to direct and indirect light because it will have no effect on these.
3. The safety of residents, pedestrians, and vehicle occupants and the free flow of vehicular traffic are not adversely affected, considering the circulation pattern, parking layout and points of ingress and egress because the existing onsite parking is appropriate for the house and the Commission finds that the garage is original, as best as can be determined, and the applicant will have the opportunity to use it as a garage in the future.
4. As conditioned, the project complies with Design Review Guidelines II-1, II-2, II-3(a), II-3(b), II-3(c), II-3(d), II-4, II-5, II-6, II-6(a), II-6(b), II-6(c), II-7, II-7(a)

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review application for construction at 121 Ricardo Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

1. **Approved Plan Set.** The approved plans are those submitted on October 3, 2013, after notices to neighbors were mailed and the application was available for public review.

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

3. **Removal of Windows, Door and Chimney.** Where windows, door and chimney have been removed, the wall or roof shall be patched and painted to match the color and material of the adjacent wall or roof.

4. **Windows.** The color scheme of the new windows shall match that of the existing windows throughout the house.

5. **Removal of the Carport.** The existing carport shall be removed.

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

Moved by Chase, Seconded by Ode

Ayes: Chase, Hobstetter, Ode, Theophilos, Zhang

Noes: None

Absent: None

**Variance and
Design Review
25 Artuna Avenue**

The Property Owner is requesting variance and design review to make modifications to the existing detached garage including the addition of a guardrail to the top parapet and to make modifications to guardrails and handrails throughout the front of the property. The requested variances are from: (1) Section 17.10.6 to allow the proposed parapet extension of the garage to extend to the front property line in lieu of the code required minimum of a 20 ft. front yard setback; and (2) Section 17.10.7 to allow the proposed parapet extension of the garage to extend to the left side property line in lieu of the code required minimum of a 4 ft. side yard setback.

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

Public testimony was received from:

Robert Kohne, owner of property, outlined the plan, which is part of construction envisioned in 1993 that was never completed.

The Commission commended the project as a good aesthetic improvement to the neighborhood. Also discussed was how the mass of the garage could be reduced by the setting back the railing, or through the use of plantings to soften the front appearance.

Resolution 263-V/DR-13

WHEREAS, the Property Owner is requesting permission to make modifications to the existing detached garage including the addition of a guardrail to the top parapet and to make modifications to guardrails and handrails throughout the front of the property located at 25 Artuna Avenue, Piedmont, California, which construction requires variance and design review; and

WHEREAS, variances from the requirements of Chapter 17 of the Piedmont City Code are necessary in order to construct within the front (south) and left (west) side yard setbacks; and

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

1. The project is categorically exempt under the California Environmental Quality Act, pursuant to Section 15301, Class 1(e);
2. The variances are approved because they comply with the variance criteria under Section 17.21.6 as follows:

The underlying lot and existing improvements present unusual physical circumstances including but not limited to the fact that the existing garage was built on the property line and the slope must be contended with. Because of these circumstances, so that strictly applying the terms of this chapter would keep the property from being used in the same manner as other properties in the zone which conform to the zoning requirements.

3. The variance is compatible with the immediately surrounding neighborhood and the public welfare because it is typical to have garages built at the lot line, and the handrails and guard railing will benefit visitors and residents of the home by preventing falling.
4. Accomplishing the improvements without a variance would cause unreasonable hardship in planning, design or construction because the guardrail is necessary to give safety on the property for residents and visitors.
5. As conditioned, the project is approved because it complies with the design review criteria under Section 17.20.9 as follows:

6. The exterior design elements (including but not limited to height, bulk, area openings, breaks in the façade, line and pitch of the roof, materials, arrangements of structures on the parcel, and concealment of mechanical and electrical equipment) are aesthetically pleasing as a whole and harmonious with existing and proposed neighborhood development in that the guardrail matches the material in the existing property, they match the existing design.

7. The design is appropriate, considering its effect on neighboring properties' existing views, privacy and access to direct and indirect light because it has no effect on these items.

8. The safety of residents, pedestrians, and vehicle occupants and the free flow of vehicular traffic are not adversely affected, considering the circulation pattern, parking layout and points of ingress and egress because it has no effect on these items.

9. The project complies with Design Review Guidelines II-1, II-2, II-3(a), II-3(b), II-3(d), II-4, II-5, II-6(a), II-6(b), III-1(a), III-3, III-4

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 25 Artuna Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

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

a. Neighboring Property Owner Permission. Should the execution of the Foundation/Shoring/Excavation Plan require excavation into a neighboring property or if access onto the neighboring property is necessary for construction, the applicant shall submit, prior to the issuance of a Building Permit, a written statement from the neighboring property owner granting permission for access onto his/her property for the purpose of excavation and/or construction.

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. **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. **Roof Color.** The proposed waterproof coating over the existing concrete roof of the garage shall be a non-reflective medium or dark color to minimize the visual impact on upslope properties.

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 Chase

Ayes: Chase, Hobstetter, Ode, Theophilos, Zhang

Noes: None

Absent: None

**Variance and
Design Review
235 Park View Avenue**

The Property Owner is requesting variance and design review to make various interior and exterior improvements including to create habitable space through the development of the basement level. The new improvements will result in the addition of a bedroom; two full bathrooms; play room; laundry room; bar; and utility room. The application also proposes to make window, door and exterior lighting modifications. The requested variance is from Section 17.16 to allow a residence with 4 rooms eligible for use as bedrooms with a 2-car garage measuring 16 ft. wide by 18 ft. deep in lieu of the code required minimum size of 18 ft. wide by 20 ft. deep.

Written notice was provided to neighbors. **Three affirmative and one negative response forms** were received. **Correspondence** was received from: Roy and Isako Egawa.

Public testimony was received from:

Andrew Lee, architect for the applicant, described the detail of the project, which is largely interior in its scope, and that the efforts to incorporate the parking variance requirement provides a unreasonable hardship for the applicant.

Mairobi Kim, owner of the property detailed reasons for expanding the living space of the house in the otherwise underutilized basement.

A recurring issue of scarcity of parking was discussed and the Commission voiced the desire to have the garage in its current state be more usable, and as such, have an automatic garage door opener and a look into constructing a ramp to allow easier drive-in access to the garage, thus allowing parking for two cars.

Resolution 265-V/DR-13

WHEREAS, the Property Owner is requesting permission to make various interior and exterior improvements including to create habitable space through the development of the basement level. The new improvements will result in the addition of a bedroom; two full bathrooms; play room; laundry room; bar; and utility room. The application also proposes to make window, door and exterior lighting modifications located at 235 Park View Avenue, Piedmont, California, which construction requires variance and design review; and

WHEREAS, variances from the requirements of Chapter 17 of the Piedmont City Code are necessary in order to construct within the front (south) and left (west) side yard setbacks; and

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

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

2. The variances are approved because they comply with the variance criteria under Section 17.21.6 as follows:

The underlying lot and existing improvements present unusual physical circumstances including but not limited to the fact that there is an upward slope and pie shaped so there is no space to add additional parking.

Because of these circumstances, so that 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 because there are other houses with four bedrooms with even a single car garage.

3. The variance is compatible with the immediately surrounding neighborhood and the public welfare because there is no change to the footprint to the house.

4. Accomplishing the improvements without a variance would cause unreasonable hardship in planning, design or construction because in working within the footprint of the house and using the current basement area, this is the best scenario the applicant can utilize without going underneath the house, which could lead to instability of the housing foundation.

5. As conditioned, the project is approved because it complies with the design review criteria under Section 17.20.9 as follows:

6. 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 proposed design maintain the current Tudor design of the house and is harmonious with other houses on the street.

7. The design is appropriate, considering its effect on neighboring properties' existing views, privacy and access to direct and indirect light because the project has no effect on light on surrounding properties.

8. The safety of residents, pedestrians, and vehicle occupants and the free flow of vehicular traffic are not adversely affected, considering the circulation pattern, parking layout and points of ingress and egress because there will be Conditions of Approval will be added to address any issues in this regard.

9. The project complies with Design Review Guidelines I-1, I-1(a), II-1, II-3(a), II-3(b), II-4, II-5, II-5(a), II-6, II-6(a), II-6(b), II-7

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 235 Park 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.** Due to the scope and nature of the application, a construction management plan shall be developed and approved by staff prior to obtaining a building permit. Said plan shall be comprehensive while specifically addressing the duration of the project, construction hours, the staging of materials, and parking of worker vehicles to ensure the free flow of traffic along Park View Avenue.

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

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

4. **Construction Completion Schedule.** Work on the Project, once begun, shall be promptly executed with continuous good faith and reasonable progress. Since timely completion of this Project is of the essence, the Property Owner shall submit for approval a Construction Completion Schedule, which will specify, in detail, the duration and percentage complete of each phase (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.

5. **Windows and Doors.** The proposed windows and doors shall be painted to match the remaining windows and doors throughout the residence.

6. **Garage Access:** The Applicant shall pursue finding a driveway ramp solution in order to make the garage more accessible subject to Staff review and approval.

7. **Garage Door:** The Applicant shall install an automatic garage door subject to Staff review and approval

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

Moved by Ode, Seconded by Chase

Ayes: Chase, Hobstetter, Ode, Theophilos, Zhang

Noes: None

Absent: None

Fence Design Review 101 Scenic Avenue

The Property Owner is requesting fence design review to demolish an existing stone retaining wall on the south side of the property along Blair Avenue and construct a new wood retaining wall in the same location.

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

Public testimony was received from Stuart Corns, designer of the project. He outlined the current project and how it differs from the design presented on September 9, 2013, including a full drainage system installed to help with irrigation issues that may affect the applicant's and neighbor's homes.

The Commission discussed the issues of drainage, electrical connections, sewer-drip systems, the arborists report, and the placement of the new fence. The Commission stressed the need for a planting strip between the new retaining wall and sidewalk at least 18 inches wide, to maintain current appearance of softness with the street.

Resolution 238-DR-13

WHEREAS, the Property Owner is requesting permission to demolish an existing stone retaining wall on the south side of the property along Blair Avenue and construct a new wood retaining wall in the same location located at 101 Scenic 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 makes the following findings:

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

As conditioned, the project is approved because it complies with the design review criteria under Section 17.20.9 as follows:

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. These elements include, but are not limited to, the use of stone material throughout the entire wall.
2. The design is appropriate, considering its effect on neighboring properties' existing views, privacy and access to direct and indirect light because the proposed wall has no impact on these items.
3. The safety of residents, pedestrians, and vehicle occupants and the free flow of vehicular traffic are not adversely affected, considering the circulation pattern, parking layout and points of ingress and egress because the proposed wall has no impact on these items.
4. As conditioned, the project complies with Design Review Guidelines IV-1, IV-1(a), IV-2, IV-3, IV-3(a), IV-4, IV-4(a), IV-5, IV-5(a), IV-6

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review application for construction at 101 Scenic Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

1. The approved plans are those submitted on August 27, 2013, after neighbors were notified of the project and the plans were available for public review.

2. Defense of Legal Challenges. If there is a third party administrative, legal or equitable action challenging the project approvals, including CEQA issues, the Property Owner shall defend and indemnify the City against any liability, fees and costs arising out of the defense, including the costs of City's own counsel. If such an action is filed, the Property Owner and City shall then enter into an agreement regarding selection of counsel and other provisions

related to the defense. For this purpose, "City" includes the City and its elected and appointed officials, agents, officers and employees.

3. **Planting Strip.** A minimum 18"-wide planting strip shall be maintained between the front retaining wall and the sidewalk.

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 Theophilos, Seconded by Hobstetter
Ayes: Chase, Hobstetter, Ode, Theophilos, Zhang
Noes: None
Absent: None

Commissioner Hobstetter excused himself from the meeting due to illness.

**Design Review and
Fence Design Review
57 Crest Road**

The Property Owner is requesting design review and fence design review to remodel the outdoor living area of the south (left) side yard and front (east) yard through the construction of several new features, including: a pool; spa; pergola; fire pit; seat walls; patios; pool equipment enclosure; fencing; arbor; fountain; bocce court; retaining walls; pathways; on-grade stairs; handrails; decorative boulders; exterior lighting including up-lights, area lights, niche lights and pool lights; and various landscape improvements.

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

Public testimony was received from:

Rich Malaspina, owner of property, outlined the project and his desire to return glory to an architectural gem of a house, and improve the outdoors of the property that has been overgrown for some time.

The Commission was pleased with the applicant's desire to improve the property, particularly that it is a landmark Clarence Tantau home. There was discussion about a previously non-visible non-conforming temporary fence that has been exposed due to the clearing of extensive overgrowth vegetation. The Commission prefers that this fencing eventually be removed. The City Planner noted that any fence placed within 20 feet of the street setback shall be subject to Planning Commission design review.

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WHEREAS, the Property Owner is requesting permission to remodel the outdoor living area of the south (left) side yard and front (east) yard through the construction of several new features, including: a pool; spa; pergola; fire pit; seat walls; patios; pool equipment enclosure; fencing; arbor; fountain; bocce court; retaining walls; pathways; on-grade stairs; handrails; decorative boulders;

exterior lighting including up-lights, area lights, niche lights and pool lights; and various landscape improvements located at 57 Crest Road, Piedmont, California, which construction requires design review; and

WHEREAS, after reviewing the application, plans and any and all testimony and documentation submitted in connection with such application, and after having visited subject property, the Piedmont Planning Commission finds The Project is categorically exempt under the California Environmental Quality Act, pursuant to Section 15301, Class 1 (e), and as conditioned, the project is approved because it complies with the design review criteria under Section 17.20.9 as follows

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 proposed heights comply with City code, the new design is an improvement and does not overpower the historical nature of the house and current neighborhood aesthetics.
2. The design is appropriate, considering its effect on neighboring properties' existing views, privacy and access to direct and indirect light because there is no impact on these elements.
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 no impact on these elements.
4. The project complies with Design Review Guidelines
II-3(a), II-3(b), II-4, II-5(a), II-6(b)
IV-1(a), IV-2, IV-3, IV-4, IV-4(a), IV-5
V-1, V-4, V-5(a)

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review application for construction at 57 Crest Road, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

1. **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 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, including builder's risk and coverage for

subcontractors, which is substantially equivalent to the contractor's requirement of this section.

2. **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.

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. **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 sq. ft. 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.

6. **Double Trailer 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.

7. **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. 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.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.

8. **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 Hardscaping and Landscaping; and
- ix. 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.

9. The non-conforming mesh fencing within the 20-foot setbacks along Crest Road and La Salle Avenue is not approved and shall be replaced subject to review by the Planning Commission, or removed.

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 Chase

Ayes: Chase, Ode, Theophilos, Zhang

Noes: None

Absent: Hobstetter

Variance, Design Review & Fence Design Review 77 Oakmont Avenue The Property Owner is requesting variance, design review and fence design review to make various front yard improvements including to: construct a new 2-car garage with roof deck atop; modify the existing driveway and sidewalk; construct three new trellises; construct a new trash enclosure; add new exterior lighting; make railing modifications; construct a new entry stair, and make various hardscape modifications including pavers, retaining walls, on-grade stairs and landings. The requested variances are from: (1) Section 17.10.6 to allow the garage to extend to the front property line in lieu of the code required minimum of a 20 ft. front yard setback; and (2) Section 17.10.7 to allow the garage to extend to within 1 inch of the right side yard property line in lieu of the code required minimum of a 4 ft. side yard setback.

Written notice was provided to neighbors. **Two affirmative and nine negative response forms** were received. **Correspondence** was received from: Ellin Firth, Dennis Barton, Franklin Sterling, Margaret and Ben Fisher, Lisa Moss, George Lo and Mee Ling Tung, Cynthia Nakayama and David Iino, Diane Tannenwald, David Richmond

Public testimony was received from:

Lucy Armentrout, owner, provided an overview of the project, stressing that it has gone through numerous iterations, taking into consideration numerous comments and concerns from her neighbors, and it is her desire to work within the parameters of what her property and budget allows while also responding thoughtfully to her neighbors.

Franklin Sterling disapproved of the project, stating that when coupled with the project next door at 79 Oakmont, the structure will be too large to be congruous with the neighborhood. He also voiced concerns for the trees that will be affected, and that the frontage of the garage(s) will change the feel of a the quaint, quiet street he moved to 30 years ago.

George Lo expressed opposition to the project, stating that as the neighbor directly across the street he would be most impacted by looking at the massive structure made my two combined garages. He also stated that two parking spaces on the street would be lost, which, on a street where parking is already at a premium, is a concern.

Cynthia Nakayama spoke on behalf of her father David Iino, who lives across the street. He feels that the project will change the feel of that end of the street by creating a too large structure, which for the neighbors across the street particularly, is oppressive. He is concerned that it will adversely affect his property value.

Ellin Firth voiced disapproval at the prospect that two 2-car garages in a row will create a feeling of an “alley” on the street, also eliminating the current greenery that the yards offer. She feels that parking will not be helped because of the elimination of on-street parking spaces.

Dennis Barton feels that there is insufficient attention given to the garages at each house and urges the use of garages as they currently stand, or improve access to them as they are. He also stated that lowering the sidewalk would help.

Mee Ling Tung stated that the view from her bedroom will be 4 garages, and the currently proposed design will affect property values because the scale of the project will change the feel and character of the neighborhood. She suggested setting back a one-car garage from the street, or if it must be a two-car garage, scale it down and back.

Lance Thornton expressed support for the project, citing that he and his wife have experienced vandalism on their cars while parked on the street and he welcomes less street parking by having garages where cars can be parked. As the neighbor to the applicant and also an applicant for a similar project next door, he feels the project will benefit the street. By replacing old decrepit structures with garages that will be utilized for parking, it will get cars off the street

Julia Chen, engineer and designer for the project, outlined the project details. She stated that the new garage will match the house more than the current white stucco design, and it will take two cars off the street. The project will lower the curb for better access to the garage.

The Commission commended the applicant on the efforts to alter plans in response to neighbor comments, and supported the project overall because of the need to get cars off the street and utilize garages for that purpose. However, the Commission felt there are ways to address the numerous neighbor concerns regarding size and scope of the project. As such, much discussion ensued about options to achieve this, including: lowering the height of the garage, setting the garage back further from the street, softening the front of the garage structure with plantings, and differentiating the design of the next door garage to break up the “monolithic” appearance.

The Commission preferred that the design of the garage be more congruous with the Dutch Colonial design of the house. The Commission also felt that if the structure could be set back from the edge of the sidewalk, it would lessen the perceived magnitude. The Commission also asked for the planting of vegetation to soften the appearance of the structure.

After considerable discussion, a motion was made to reject the project with a tie vote. Because of this tie vote, the Commission discussed the matter further and a motion was made to vacate the previous rejection of the project and approve the project with conditions.

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WHEREAS, the Property Owner is requesting permission to make various front yard improvements including to: construct a new 2-car garage with roof deck atop; modify the existing driveway and sidewalk; construct three new trellises; construct a new trash enclosure; add new exterior lighting; make railing modifications; construct a new entry stair, and make various hardscape modifications including pavers, retaining walls, on-grade stairs and landings located at 77 Oakmont Avenue, Piedmont, California, which construction requires variance and design review; and

WHEREAS, variances from the requirements of Chapter 17 of the Piedmont City Code are necessary in order to construct within the front and side yard setbacks; and

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

1. The project is categorically exempt under the California Environmental Quality Act, pursuant to Section 15301, Class 1(e);
2. The two variances are approved because they comply with the variance criteria under Section 17.21.6 as follows:
3. The underlying lot and existing improvements present unusual physical circumstances including but not limited to narrow street frontage, difficult access to the street from the sidewalk and the existing non-conforming setbacks for the current garage. Because of these circumstances, so strictly applying the terms of this chapter would prevent the project from being pursued thus not achieving one of the Commission's goals which is to encourage off-street parking. The proposed lowering of the sidewalk and driveway will improve the access to the garage and the variances are required to deal with the existing difficult access to the garage because of a heightened driveway.
4. The variances are compatible with the immediately surrounding neighborhood and the public welfare because the garage already exists. There are also other garages in the neighborhood that have the same existing non-conformity.
5. Accomplishing the improvement without the two variances would cause unreasonable hardship in planning, design, or construction because neither a single nor 2-car garage could be constructed on the property without the variances.

As conditioned, the project is approved because it complies with the design review criteria under Section 17.20.9 as follows:

6. 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 applicant has

expressed a willingness to make design changes to set back the new garage 2 feet from the front property line, lower the roofline of the front of the new garage, lay a trellis over the front of the new garage to soften the impact on the neighborhood, and add another trellis on a retaining wall at the back of the new garage.

7. The design is appropriate, considering its effect on neighboring properties' existing views, privacy and access to direct and indirect light because the applicant has agreed to substantially modify the view of the new garage for the neighbors and privacy and access to direct and indirect light will not be altered.

8. The safety of residents, pedestrians, and vehicle occupants and the free flow of vehicular traffic are not adversely affected, considering the circulation pattern, parking layout and points of ingress and egress because the proposed onsite parking is appropriate for the location and size of the new garage, , and will not take away on-street parking.

8. As conditioned, the project complies with Design Review Guidelines II-1, II-2, II-3(a), II-3(b), II-3(c), II-3(d), II-4, II-5, II-5(a), II-6, II-6(a), II-6(b), II-6(c), II-7, II-7(a)
III-1, III-1(a), III-2, III-2(a), III-3, III-4, III-5, III-5(a), III-6, III-6(a), III-7, III-7(a)
IV-1, IV-1(a), IV-1(b), IV-2, IV-2(a), IV-3, IV-3(a), IV-4, IV-4(a), IV-5, IV-5(a), IV-6
V-1, V-2, V-3, V-4, V-5, V-5(a), V-5(b), V-5(c), V-6, V-7, V-8, V-9, V-10, V-11

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 77 Oakmont 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.

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 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.

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

4. **Contractor's General Liability Insurance.** To ensure that the contractor doing work in the City will be responsible for damages caused by the work to

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

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

7. Property Line Location. A licensed land surveyor shall be required by the Building Department to verify and mark the location of the east (right) and south (front) property lines at the time of foundation and/or frame inspection to verify the approved setback dimension measured to the new construction.

8. Geotechnical Report and Review. At the option of the Building Official, the property owner may be required to 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.

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.

9. **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.

10. **Foundation/Shoring/Excavation Plan.** At the option of the Building Official, the property owner may be required to 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.

11. **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.

12. **Arborist's Report and Certified Tree Preservation Plan.** Before the issuance of a building permit, the Property Owner shall submit an Arborist's Report that includes a Tree Preservation Plan that incorporates tree preservation measures recommended by the Arborist to preserve the three existing trees at the front of the property near the proposed construction of the new garage. The tree preservation measures shall be on the appropriate sheets of the construction plans. The arborist shall be on-site during critical construction activities related to the new retaining wall at the north side of the entrance to the driveway, 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 a tree has been compromised, mitigation measures must be specified in writing, and implementation certified by the Project Arborist. Should the Arborist recommend removal of any existing tree in the front, an in-lieu replacement tree or trees shall be planted elsewhere on the property. Replacement tree size is subject to staff review, and shall be commensurate with the size and numbers of the tree to be removed and 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.

13. **Final Landscape Plan.** Before issuance of a building permit, the Property Owner shall submit for staff review and approval a Final Landscape Plan that

includes the 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.

14. **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.

15. **Encroachment Permit.** Before the issuance of a building permit, the Property Owner shall apply for an encroachment permit to allow for the construction of the driveway bridge as proposed in Option 2 (only if approved) within the public right-of-way.

16. **Approved Plan Set.** The approved plans are those submitted on September 30, 2013 with additional information submitted on October 3, 2013, after notices to neighbors were mailed and the application was available for public review, and include additional modifications detailed in the illustrations submitted at the Planning Commission meeting of October 14, 2013.

17. **Windows.** The color scheme of the new window shall match that of the existing windows throughout the house. The new window with simulated divided lites shall have three-dimensional simulated divided lites.

18. The new garage door shall be electronically operated.

19. The maximum height at the front of the new garage shall be lowered to 9 feet 6 inches.

20. The new garage shall be set back two feet from the front property line.

21. The 18-inch planter box atop the new garage shall be removed and a trellis shall be situated in its place.

22. The rear retaining wall created by the 2-foot setback of the new garage shall have a trellis atop which shall be subject to staff review and approval, including whatever step access at the rear is required due to a change in grade resulting from the 2-foot setback.

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

Moved by Chase, Seconded by Ode

Ayes: Chase, Ode, Theophilos, Zhang

Noes: None

Absent: Hobstetter

Variance, Design Review & Fence Design Review
79 Oakmont Avenue The Property Owner is requesting variance, design review and fence design review to make various front yard improvements, including to: construct a new 2-car garage with roof deck atop; modify the existing driveway and sidewalk; make railing modifications; construct a new entry stairway and retaining wall in the City's right-of-way; construct a new 5 ft. high retaining wall in the front yard setback; and make various hardscape modifications including new stairs, landings, pavers, and retaining walls. The requested variances are from: (1) Section 17.10.4 to allow a structure coverage of 51.1% in lieu of the code permitted maximum of 40%; (2) Section 17.10.6 to allow the garage to extend to the front property line in lieu of the code required minimum of a 20 ft. front yard setback; and (3) Section 17.10.7 to allow the garage to extend to within 1 inch of the left side property line in lieu of the code required minimum of a 4 ft. side yard setback.

Written notice was provided to neighbors. **Two affirmative and nine negative response forms** were received. **Correspondence** was received from: Ellin Firth, Dennis Barton, Franklin and Coles Sterling, Margaret and Ben Fisher, Lisa Moss, George Lo and Mee Ling Tung, Cynthia Nakayama and David Iino, Diane Tannenwald, David Richmond, Lucy Armentrout, Susan Freeman.

Public testimony was received from:

Lance Thornton, applicant, outlined his reasons for the project, including being subject to vehicle vandalism, and difficulty parking and exiting vehicles in front of his house due to the steep grade difference between the curb and street. He stressed that he will be using the new garage for parking, not for storage. He answered questions from the Commission about the tree in his front yard and that he has worked with an arborist to ensure the safety of the tree during and after completion of the project.

Lucy Armentrout spoke in support of the project, complimenting her neighbors in their efforts to work together to create a harmonious conjunctive project. She noted that part of this collaborative effort was to minimize construction impact to the overall neighborhood.

Julie Chen spoke about the project in light of the comments regarding the project at 77 Oakmont. She outlined how the project could include the modifications outlined in the neighboring project, including lowering the height.

Franklin Sterling commended the Commission and the process as a whole seeing the effort and finding amenable solutions to concerns of the neighbors of these projects. He reiterated his concern for the tree on the property at 79 Oakmont. He also welcomed the applicant to park their car in front of his house, where there is often empty parking spaces.

Ellin Firth thanked the Commission for working with the neighbors and the applicant for finding solutions. She commented that seeing a color illustration of the garage designs was very helpful in making it a more likable project. She reiterated that setting back the garage at 77 Oakmont would be make the double

garage structure less monolithic in appearance. She also thanked Ms. Armentrout for removing from the proposal the shelter for garbage and recycling containers.

Mee Ling Tung asked if there was a way the city could enforce the use of garages for parking, rather than storage.

The Commission concluded the applicants and architect have worked well in making adjustments to address neighborhood concerns for both the proposal for 79 Oakmont and in conjunction with 77 Oakmont.

Resolution 272-V/DR-13

WHEREAS, the Property Owner is requesting permission to make various front yard improvements including to: construct a new 2-car garage with roof deck atop; modify the existing driveway and sidewalk; make railing modifications; construct a new entry stairway and retaining wall in the City's right-of-way; construct a new 5 ft. high retaining wall in the front yard setback; and make various hardscape modifications including new stairs, landings, pavers, and retaining walls located at 79 Oakmont Avenue, Piedmont, California, which construction requires variance and design review; and

WHEREAS, variances from the requirements of Chapter 17 of the Piedmont City Code are necessary in order to construct within the front yard setback, construct within and side yard setback and exceed the structure coverage limit; and

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

1. The project is categorically exempt under the California Environmental Quality Act, pursuant to Section 15301, Class 1(e);
2. The three variances to construct in the 20-foot front yard setback, construct in the 4-foot side yard setback, and exceed the structure coverage limit are approved because they comply with the variance criteria under Section 17.21.6.
3. The underlying lot and existing improvements present unusual physical circumstances, including but not limited to the pre-existing non-conforming setbacks and location of the garage and narrowness of the frontage of the house along the street. 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. The existing access to the garage from the street is difficult and a variance should be granted because it will improve that access.
4. The variances are compatible with the immediately surrounding neighborhood and the public welfare because the proposed structure will enlarge by a minimal amount from the existing non-conforming garage structure, the proposed front of the garage and walkway to the house will improve the access to the property, and the garage will actually be used to store cars. This is in accordance with the City's desire to have more available parking.

5. Accomplishing the improvement without these variances would cause unreasonable hardship in planning, design, or construction because in order to accommodate 2 vehicles in a garage located within the setback limits, the garage would have to be set under the house and cause potential damage to the house.

As conditioned, the project is approved because it complies with the design review criteria under Section 17.20.9 as follows

6. 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 new garage is congruent to the Spanish-Mediterranean style of the house and there are similar style houses in the same zone.

7. The design is appropriate, considering its effect on neighboring properties' existing views, privacy and access to direct and indirect light because the applicant has agreed to modify the proposed design to mitigate the effect on neighbors' views and the proposed design will have no impact on privacy and access to direct and indirect light.

8. The safety of residents, pedestrians, and vehicle occupants and the free flow of vehicular traffic are not adversely affected, considering the circulation pattern, parking layout and points of ingress and egress because additional off-street parking will be conducive to better parking for the neighborhood.

9. As conditioned, the project complies with Design Review Guidelines II-1, II-2, II-3(a), II-3(b), II-3(c), II-3(d), II-4, II-5, II-5(a), II-6, II-6(a), II-6(b), II-6(c), II-7, II-7(a) (*remodels*) III-1, III-1(a), III-2, III-2(a), III-3, III-4, III-5, III-5(a), III-6, III-6(a), III-7, III-7(a) (*garages*) IV-1, IV-1(a), IV-1(b), IV-2, IV-2(a), IV-3, IV-3(a), IV-4, IV-4(a), IV-5, IV-5(a), IV-6 (*retaining walls*)

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 79 Oakmont 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.

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 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.

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

4. **Contractor's General Liability Insurance.** To ensure that the contractor doing work in the City will be responsible for damages caused by the work to City property or to neighboring property, the Property Owner shall require all contractors 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. **Defense of Legal Challenges.** If there is a third party administrative, legal or equitable action challenging the project approvals, including CEQA issues, the Property Owner shall defend and indemnify the City against any liability, fees and costs arising out of the defense, including the costs of City's own counsel. If such an action is filed, the Property Owner and City shall then enter into an agreement regarding selection of counsel and other provisions related to the defense. For this purpose, "City" includes the City and its elected and appointed officials, agents, officers and employees.

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

7. **Property Line Location.** A licensed land surveyor shall be required by the Building Department to verify and mark the location of the west (left) and south (front) property lines at the time of foundation and/or frame inspection to verify the approved setback dimension measured to the new construction.

8. **Geotechnical Report and Review.** At the option of the Building Official, the property owner may be required to 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.

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.

9. **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.

10. **Foundation/Shoring/Excavation Plan.** At the option of the Building Official, the property owner may be required to 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.

11. **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.

12. **Arborist's Report and Certified Tree Preservation Plan.** Before the issuance of a building permit, the Property Owner shall submit an Arborist's Report that includes a Tree Preservation Plan that incorporates tree preservation measures recommended by the Arborist to preserve the two existing oak trees at the front of the property near the proposed construction of the new garage. The tree preservation measures shall be on the appropriate sheets of the construction plans. The arborist shall be on-site during critical construction activities related to the new retaining wall at the north side of the entrance to the driveway, 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 a tree has been compromised, mitigation measures must be specified in writing, and implementation certified by the Project Arborist. Should the Arborist recommend removal of any existing oak tree in the front, an in-lieu replacement tree or trees shall be planted elsewhere on the property. Replacement tree size is subject to staff review, and shall be commensurate with the size and numbers of the tree to be removed and 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.

13. **Final Landscape Plan.** Before issuance of a building permit, the Property Owner shall submit for staff review and approval a Final Landscape Plan that includes the 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.

14. **Encroachment Permit.** Before the issuance of a building permit, the Property Owner shall apply for an encroachment permit to allow for the construction of the concrete retaining wall, concrete stair and the driveway bridge as proposed in Option 2 (only if approved) within the public right-of-way.

15. **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.

16. The approved plans include the illustration provided on October 14, 2013.

17. The new garage door shall be electronically operated.

18. The maximum height at the front of the new garage structure shall be lowered to 9 feet 6 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 Chase, Seconded by Ode

Ayes: Chase, Ode, Theophilos, Zhang

Noes: None

Absent: Hobstetter

**Design Review
11 Muir Avenue**

The Property Owner is requesting design review to construct a new retaining wall, partially terraced, along the rear (west) and right (south) side property lines at the southwest corner of the property for the purpose of supporting a new level rear yard; install a new wrought iron guardrail atop the retaining wall, and make various landscape and hardscape improvements within the vicinity of the wall. A similar application was denied by the Commission on August 12, 2013.

Written notice was provided to neighbors. **One negative response form** was received. **Correspondence** was received from: Rochelle Wolk, David White

Public testimony was received from:

Lawrence Rugg, architect for the applicant, reviewed the project in its new iteration relative to the project as was presented in August 2013, and detailed the reasons behind the project for the family: that the aim of the design is to make the backyard more usable for green lawn space that is level with the rest of the yard that currently has a pool, deck, and driveway; and that numerous changes have been made to address the neighbors concerns regarding the initial very high retaining wall.

Rachael Wolk voiced her objection to the current design plan stating that the lower portion of the retaining wall that measures 5.5 feet is directly at the height that “hits you in the face” when you walk out of her house, and is therefore too high. The setbacks from the property line and between the additional retaining wall are not enough to mitigate the high scale of the overall design. She stated that Mr. Settlemier had neither discussed nor shown her the new design with her, although she would like to have discussions with him and continue to work with Mr. Settlemier in finding an acceptable design.

David White, son-in-law of neighbor Wolk, thanked the Commission for staying near to midnight to consider the impacts of this project. He reiterated that the proposed plan still has a profound negative impact on the very small backyard of his mother-in-law at 335 La Salle Avenue, with an lower wall that is too high and setbacks that are too shallow. He urged the Commission to continue to look at alternatives of design so as to find a suitable solution for both the applicant and Ms. Wolk.

Reid Settlemier, applicant, explained how the new designs were an attempt to address the concerns of the Commission and neighbor, and responded to his neighbors concerns regarding the retaining walls, offering to shape and trim the trees at the corner of her property as a possible solution.

The Commission agreed that while the latest design is an improvement from the designs submitted previously, they felt that it falls short of ideal for both parties. There was considerable discussion of how to terrace the property at the maximum height as well as deepest setback allowances for retaining walls. The Commission indicated a preference for one more terraced step that would preserve the light and feeling of space for the neighbor, with walls four feet in height maximum (particularly the first one) and deeper setbacks of at least three feet between each retaining wall all the way up. Initially the Commission started approval of the project with those conditions. However, as a potential action and associated conditions were being discussed by the Commission, the applicant voiced numerous objections from the gallery, regarding the action and conditions being discussed, and vociferously pleaded that he be given the opportunity to work with his neighbor to seek a compromise design. The ideas put forth in that objection were discussed by the Commission, which pointed out that several conditions had already been met, but there was still room for improvement. Ultimately the Commission concluded that the applicant would do well to work further on the design to mitigate any negative impacts on the property at 335 La Salle Avenue, particularly in regards to guideline IV-2, IV-2(a), and IV-5. The Commission feels the design is very close to achieving a

winning situation and encourages conferring with the neighbor in this process, and to resubmit design plans, along with a final landscaping plan, at a future date.

Resolution 273-DR-13

WHEREAS, the Property Owner is requesting permission to construct a new retaining wall, partially terraced, along the rear (west) and right (south) side property lines at the southwest corner of the property for the purpose of supporting a new level rear yard; install a new wrought iron guardrail atop the retaining wall, and make various landscape and hardscape improvements within the vicinity of the wall located at 11 Muir 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 denies the application, without prejudice, based on the following findings:

1. The exterior design elements are not aesthetically pleasing as a whole and are not harmonious with existing and proposed neighborhood development. because the proposed terraced retaining walls are not terraced enough and as proposed would deny the neighbor significant use of her yard in its current state of space, air, light, and privacy.
2. The design is not appropriate, considering its effect on neighboring properties' existing views, privacy and access to direct and indirect light because the proposed walls in the current design are too high and the setbacks too short and too close to the edge of the property shared with 335 La Salle.
3. The safety of residents, pedestrians, and vehicle occupants and the free flow of vehicular traffic are not adversely affected.

The Commission voted to extend the meeting past the usual time allotted.

Moved by Chase, Seconded by Zhang

Ayes: Chase, Ode, Theophilos, Zhang

Noes: None

Absent: Hobstetter

**Chapter 17
Code Revisions**

City Planner Kate Black presented possible modifications to Chapter 17 of the Municipal Code. This is the second phase and 14th in a series of hearings to consider comprehensive changes to the Zoning Code. This hearing follows a hearing on September 9, 2013 and a Special Session public work session on September 30, 2013 that are limited to requirements to implement General Plan Actions and Housing Element Programs, and changes to comply with State law. The Commission may take action to make a recommendation of adoption to the City Council.

The Phase II changes are changes required to be in compliance with changes in State Law; and the majority are the mandatory actions and programs that must be implemented in order for the City to be in compliance with the General Plan and the Housing Element. Based on public comment, Ms. Black wished to

mention to the Commission the following more confusing proposed changes to ensure clarification:

Mixed Use Commercial/Residential Developments: In an effort to convince the State that there is some ability to add Multi Family housing in Piedmont, to the General Plan requires that the City permit mixed use developments in the City's commercial zone (ZONE D); adding this use does not constitute a rezoning or reclassification of a zone, which is regulated under Piedmont's Charter to be approved by a majority vote of Piedmont voters. For example, a reclassification would involve changing the zone of a particular group of properties, from Zone A (single-family) to Zone D (commercial). Adding mixed use as an allowed CUP category is a change to the standards and criteria regulating uses and physical features within a zone. She noted that the only use allowed by right in the zone is a single family house – all of the other commercial uses, and including the proposed mixed use – require a conditional use permit. For reference, there is already a mixed use property in town, which is the McMullen store with two apartments above on Grand Avenue. At the last two hearings, some concerns were voiced that the standards for development of mixed use developments were too strict, including the currently proposed 80% hardscape coverage limit. For now, the 80% is a requirement of commercial uses in the zone, and a requirement under our current General Plan, and changing it in the Code would not be consistent with commercial developments or the General Plan. However, at this same October 14th meeting, we are starting our update to the Housing Element of the General Plan, and it is through this process that we can begin to develop refinements to the Housing Element of the General Plan and subsequently the Zoning Code changes proposed under Phase III and Design Guidelines.

Lot Size: Staff is proposing two changes to the criteria in Zone A: First, is a proposal to clarify that no variance is required in order to construct a new residence on an *existing* properly subdivided lot that has with fewer than the minimum 10,000 square foot lot area, could be considered a regulatory takings. Second, the General Plan requires new lots to meet the minimum 10k square feet and 90' of frontage except when the prevailing lot size and frontage of the area is smaller. This was done partly to show the State that the City was implementing actions to encourage housing, but also in response to the fact that the median lot size in Zone A is 6,350 square feet. Again, requiring a newly created lot to be a minimum of 10,000 square feet, when area lots were 8,000 square feet or less could be considered a regulatory takings. The lot size and frontage requirements in Zone E are not proposed to change.

Conditional Use Permits: In order to comply with State law, the automatic expiration of conditional use permits is proposed to be eliminated. What is proposed is a review two years after the initial approval of a CUP, and if it is determined that the business is not operating in compliance with the terms of the initial CUP approval, the City can schedule a hearing to consider revocation of the CUP. Staff concurs with public comment that this initial review should not be done administratively, but with adequate notice to the neighbors.

Planning staff reminded the Commissioners that these proposed Phase II changes are just those to comply with State law and General Plan/Housing Element requirements. There will be an opportunity to make other changes as part of Phase III and/or the Design Guidelines redo. However, for tonight the Commission is being asked to take action on the changes that are required by

state law, and are required in order for the City to comply with State law and our General Plan and Housing Element.

The Planning Commission recommendation tonight will be forwarded to the City Council for a first reading hearing and a second reading hearing. Ms. Black thanked Deputy City Attorney Judy Robbins, who was present at the meeting, and City Attorney Tom Curry for their assistance through the process so far.

Public testimony was received from:

Alejandra Gutzeit read remarks from John Malick, architect. His comments referred to certain modifications of Chapter 17, specifically two provisions in 17.13.14A (b) regulating the percent of lot coverage and hardscape for commercial and mixed use commercial projects in Zone D.

The Commission discussed the revisions, and the comments put forth by Mr. Malick.

The Commission recommends that the City Council make a determination that the proposed amendments are not a "project" within the meaning of the California Environmental Quality Act (CEQA) under CEQA Guidelines Section 15378; the proposed action to approve the amendments is exempt from CEQA because it can be seen with certainty that there is no possibility that the ordinance may have a significant effect on the environment, under CEQA Guidelines Section 15061(b)(3); and portions of the ordinance are categorically exempt under CEQA Guidelines Sections 15303(b) (multi-family for up to six dwelling units) and 15282(n) (compliance with Solar Shade Control Act); and the Commission recommends the adoption of the proposed Code amendments contained herein as Attachment I, as discussed and modified at the September 9 and September 30, 2013 Planning Commission meetings.

Moved by Chase, Seconded by Ode

Ayes: Chase, Ode, Theophilos, Zhang

Noes: None

Absent: Hobstetter

Commissioner Chase commended and thanked the City Planner, City Attorney and Deputy City Attorney for their exhaustive efforts in revision of the Code. He also acknowledge the invaluable input from the public.

ANNOUNCEMENT

The City announces the departure of planning technician Sylvia Turuno for the position of Assistant City Planner for the City of Berkeley. Her tenure at the City of Piedmont for 7 years was highly valued and she will be missed. She is wished the best of luck in her new position and the City of Berkeley is lucky to have her.

The City of Piedmont is deeply saddened to announce the passing of City Attorney Thomas R. Curry on October 12, 2013. Mr. Curry succumbed to an illness he had been fighting for some time.

ADJOURNMENT

There being no further business, Chairman Zhang adjourned the meeting at 12:15a.m.

