

## **PIEDMONT PLANNING COMMISSION**

### **Regular Meeting Minutes for Monday, April 13, 2015**

A Regular Session of the Piedmont Planning Commission was held April 13, 2015, 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 March 30, 2015, and a revised agenda was posted for public inspection on March 31, 2015.

#### **CALL TO ORDER**

Chairman Ode called the meeting to order at 5:01 p.m.

#### **ROLL CALL**

Present: Commissioners Susan Ode, Louise Simpson, Tony Theophilos, and Tom Zhang

Absent: Commissioner Philip Chase (excused) and Alternate Commissioner Eric Behrens (excused)

Staff: Planning Director Kate Black, Senior Planner Kevin Jackson, Assistant Planners Janet Chang and Jennifer Gavin, and Planning Technician Sunny Chao

Council Liaison: Councilmember Tim Rood

#### **ANNOUNCEMENTS**

Chairman Ode reported that the City Council discussed short term rentals at its March 16, 2015, meeting, and that the issue of short term rentals will continue to be discussed at future Planning Commission and City Council meetings.

#### **ELECTION OF OFFICERS**

##### **Resolution 7-PL-15**

RESOLVED, that the Planning Commission appoints Tony Theophilos to serve as Commission Chair for one year.

Moved by Zhang, Seconded by Simpson

Ayes: Ode, Simpson, Theophilos, Zhang

Noes: None

Recused:

Absent: Behrens, Chase

##### **Resolution 8-PL-15**

RESOLVED, that the Planning Commission appoints Louise Simpson to serve as Commission Vice Chair for one year.

Moved by Ode, Seconded by Zhang

Ayes: Ode, Simpson, Theophilos, Zhang

Noes: None

Recused:

Absent: Behrens, Chase

#### **APPROVAL OF MINUTES**

##### **Resolution 9-PL-15**

RESOLVED, that the Planning Commission approves as submitted its meeting minutes of the March 9, 2015, regular hearing of the Planning Commission.

Moved by Zhang, Seconded by Ode

Ayes: Ode, Simpson, Theophilos, Zhang

Noes: None

Recused:

Absent: Behrens, Chase

**CONSENT CALENDAR**

The Commission placed the following applications on the Consent Calendar:

- 538 Blair Avenue (Design Review)
- 60 Oakmont Avenue (Fence Design Review)
- 55 Sharon Avenue (Variance, Design Review, and Fence Design Review)
- 109 King Avenue (Design Review)
- 206 San Carlos Avenue (Variance)

**Resolution 10-PL-15**

RESOLVED, that the Planning Commission approves the Consent Calendar as noted.

Moved by Ode, Seconded by Zhang

Ayes: Ode, Simpson, Theophilos, Zhang

Noes: None

Recused:

Absent: Behrens, Chase

At the end of the meeting, the following Resolutions were approved adopting the Consent Calendar:

**Design Review  
538 Blair Avenue**

**Resolution 96-DR-15**

WHEREAS, the Property Owner is requesting permission to make modifications to retaining walls, stairs, and patios throughout the property; to construct a new raised terrace, spa, and built-in benches on the north side of the property; and to install new air conditioning units at the southeast side of the property, located at 538 Blair 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 the subject property, the Piedmont Planning Commission finds that the project is categorically exempt under the California Environmental Quality Act, pursuant to Section 15301, Class 1(e) and the proposal conforms with the criteria and standards of Section 17.20.9 of the Piedmont City Code:

1. The exterior design elements are aesthetically pleasing as a whole and harmonious with existing and proposed neighborhood development, in that the proposed landscaping is not visible from the street.
2. The design is appropriate, considering its effect on neighboring properties' existing views, privacy and access to direct and indirect light, because there is no impact on any neighbors.
3. The safety of residents, pedestrians, and vehicle occupants and the free flow of vehicular traffic are not adversely affected, considering the circulation pattern, parking layout and points of ingress and egress, because there is no impact.
4. The project complies with Design Review Guidelines II-1, II-2, II-3, II-3(a), II-3(b), II-3(c), II-3(d), II-6, IV-1, IV-1(a), IV-1(b), IV-2, IV-2(a), IV-3, IV-4, IV-5, IV-5(a).

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review application for

proposed construction at 538 Blair Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

1. **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.

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. **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.

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

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

- i. Completion of Excavation;
- ii. Completion of Retaining Walls;
- iii. Completion of Foundation;
- iv. Completion of Rough Framing;
- v. Completion of Electrical;
- vi. Completion of Plumbing;
- vii. Completion of Mechanical;
- viii. Completion of Fire Sprinklers;
- ix. Completion of Home;
- x. Completion of Hardscaping and Landscaping; and
- xi. any further construction benchmarks and conditions of occupancy as may be determined by the Director of Public Works.

b. Before the Project begins, the Director of Public Works shall make a determination as to the reasonableness of the proposed completion dates applicable to the Project, and that determination shall constitute the "Approved Schedule" and be binding on the Property Owner. The City may, at the Property Owner's sole cost, engage the

services of a consultant to review the Property Owner's proposed Construction Completion Schedule and, to the extent the period allocated for any work appears unjustifiable, recommend to the Director of Public Works a reasonable completion date for any benchmark.

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

Moved by Simpson, Seconded by Ode

Ayes: Ode, Simpson, Theophilos, Zhang

Noes: None

Recused:

Absent: Behrens, Chase

**Fence Design Review  
60 Oakmont Avenue**

**Resolution 99-DR-15**

WHEREAS, the Property Owner is requesting permission to demolish the existing retaining walls and fencing in the west and east side yards, and construct the following features: new retaining walls in the west side yard; new waste cart enclosure, planter box, retaining walls, guardrail, patio, and pole-supported string lighting in the east side yard; new wood fencing and gate with trellis enclosing the east side yard; new iron fencing enclosing the front yard; and various landscape and hardscape alterations throughout the property, including a reconfigured front entry path, located at 60 Oakmont 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 the subject property, the Piedmont Planning Commission finds that the project is categorically exempt under the California Environmental Quality Act, pursuant to Section 15301, Class 1(e) and the proposal conforms with the criteria and standards of Section 17.20.9 of the Piedmont City Code:

1. The exterior design elements are aesthetically pleasing as a whole and harmonious with existing and proposed neighborhood development. These elements include, but are not limited to, the fence style, which is in keeping with the existing architectural style of the house and blends in with the neighborhood; and the brick retaining walls, which match the brick at the entry porch.
2. The design is appropriate, considering its effect on neighboring properties' existing views, privacy and access to direct and indirect light, because there are no high structures proposed that would have an effect on neighboring properties' existing view, privacy and access to direct and indirect light.
3. The safety of residents, pedestrians, and vehicle occupants and the free flow of vehicular traffic are not adversely affected, because no circulation pattern is altered or changed, and there are no tall trees proposed at the street corner to block the view.

4. The project complies with Design Review Guidelines IV-1, IV-1(a), IV-1(b), IV-3, IV-3(a), IV-4, IV-4(a), IV-5, 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 design review application for proposed construction at 60 Oakmont Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

**1. Property Line Location.** As required by the Chief Building Official, a licensed land surveyor or civil engineer shall verify that the approved construction, including retaining walls and fencing, is built at the approved setback dimension from the north, east, and west property lines.

**2. Encroachment Permit.** Before the issuance of a building permit, the Property Owner shall apply for an encroachment permit to allow for the construction of retaining walls and fencing within the public easement in the east side yard for the sanitary sewer system.

**3. Sewer Main Condition and Repair.** City records indicate that a City sewer main and associated easement may be located near the proposed construction abutting the east property line. The applicant shall work with City staff to verify the location and depth of the sewer main. In addition, the City shall videotape the existing sanitary sewer main to assess its pre-construction condition in order to make a determination as to whether any repairs to or replacement of the sewer main is required prior to the commencement of excavation and/or construction. (The City is responsible for the cost of the main line, and the property owner for costs of the lateral.) As part of the final inspection the same sanitary sewer lines shall be inspected as required by the Director of Public Works, who shall also determine if the sewer line was damaged as a result of the construction and therefore must be repaired at the applicant's expense. The applicant is responsible to locate their private sewer lateral and note such location on the building permit drawings.

**4. Location of Concrete Retaining Wall.** The new concrete retaining wall in east side yard and running parallel to the east property line shall be a minimum 2 feet from the centerline of the City sewer main that runs parallel to the east property line.

**5. Contractor's General Liability Insurance.** To ensure that the contractor doing work in the City will be responsible for damages caused by the work to City property or to neighboring property, the Property Owner shall require all contractors 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.

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

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

8. **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.

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

a. Construction Site Control of Stormwater. The California Regional Water Quality Control Board requires all projects that disturb the site to comply with Provision C.6 of the San Francisco Bay Regional Stormwater NPDES Permit in order to prevent construction site discharges of pollutants and other regulated materials during construction. As required by the Chief Building Official and prior to the issuance of a building permit, the Applicant shall develop and submit a construction stormwater management plan as part of the Construction Management Plan to achieve timely and effective compliance with Provision C.6. Permit Provision C.6.c.ii provides sources for site specific, and seasonally- and phase-appropriate, effective Best Management Practices (BMPs) that may be incorporated into the stormwater management plan. Copies of the Municipal Regional Stormwater Permit are available from the Piedmont Public Works Department and on-line at [cleanwaterprogram.org](http://cleanwaterprogram.org).

b. Neighboring Property Owner Permission. Should the execution of the Foundation/Shoring/Excavation Plan for the concrete retaining wall 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 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.

10. **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 Hardscaping and Landscaping; and
- vii. any further construction benchmarks and conditions of occupancy as may be determined by the Director of Public Works.

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

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

Moved by Zhang, Seconded by Ode  
Ayes: Ode, Simpson, Theophilos, Zhang  
Noes: None  
Recused:  
Absent: Behrens, Chase

**Variance and  
Design Review  
55 Sharon Avenue**

**Resolution 100-V/DR-15**

WHEREAS, the Property Owner is requesting permission to make several modifications to the front of the property, including modifications to retaining walls; modifications to the existing terrace, including a new roof eave across the front to match the existing roof; and to construct a new fence and gate, located at 55 Sharon Avenue, Piedmont, California, which construction requires design review; and

WHEREAS, a variance from the requirements of Chapter 17 of the Piedmont City Code is necessary to construct new structure within the front 20 foot setback; and

WHEREAS, after reviewing the application, plans and any and all testimony and documentation submitted in connection with such application, and after having visited the 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

WHEREAS, with regard to variance, the Planning Commission finds that the proposal complies with the variance criteria under Section 17.21.6 of the Piedmont City Code:

1. The underlying lot and existing improvements present unusual physical circumstances, including but not limited to the fact that the proposal includes a minimal expansion of an existing non-conforming eave and gutter. Strictly applying the terms of this chapter would keep the property from being used in the same manner as other properties in the zone that conform to the zoning requirements.
2. The variance is compatible with the immediately surrounding neighborhood and the public welfare, because the proposed extension of the existing eave and gutter is minimal.
3. Accomplishing the improvements without variance would cause unreasonable hardship in planning, design, or construction, because the construction project would not be possible as proposed without the variance.

WHEREAS, with regard to design review, the Planning Commission finds that the proposal conforms with the criteria and standards of Section 17.20.9 of the Piedmont City Code:

1. The exterior design elements are aesthetically pleasing as a whole and harmonious with existing and proposed neighborhood development. These elements include, but are not limited to, the lowering of a brick retaining wall and the alteration of the railing above the garage, which are aesthetically pleasing improvements. The new railing is more appropriate with the design of the house.
2. The design is appropriate, considering its effect on neighboring properties' existing views, privacy and access to direct and indirect light because there will be no impact.
3. The safety of residents, pedestrians, and vehicle occupants and the free flow of vehicular traffic are not adversely affected, considering the circulation pattern, parking layout and points of ingress and egress, because there will be no impact.
4. The project complies with Design Review Guidelines II-1, II-2, II-3, 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), 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-6, V-7, V-8.



RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the variance and design review application for proposed construction at 55 Sharon Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

1. **Garage Door.** The garage door shall be mechanically operable. If design modifications are required to accomplish this, those modifications shall be subject to staff review.

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

5. **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.

6. **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;
- i. Completion of Foundation;
- iii. Completion of Rough Framing;
- iv. Completion of Electrical;
- v. Completion of Plumbing;
- vi. Completion of Mechanical;
- vii. Completion of Fire Sprinklers;
- viii. Completion of Home;

- ix. Completion of Hardscaping and Landscaping; and
- x. 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.

Moved by Simpson, Seconded by Ode  
Ayes: Ode, Simpson, Theophilos, Zhang  
Noes: None  
Recused:  
Absent: Behrens, Chase

**Design Review  
109 King Avenue**

**Resolution 101-DR-15**

WHEREAS, the Property Owner is requesting permission to remodel and stylistically change the residence through the following alterations: the removal of chimneys, upper level balconies on the front façade, rear bay windows, and the unpermitted trellis, storage shed, and privacy screen in the rear yard; the replacement of the wood shingle siding with a stucco finish, except at the front entry wall where horizontal wood siding is proposed; the expansion of the rear terrace and the replacement of its trellis cover with a new roof; skylight, window and door modifications throughout; the installation of new garage doors, a new wall-mounted television at the rear terrace; new exterior lighting and new handrails; retroactive approval of a pool equipment shed at the northwest corner of the property; various changes to the interior; and various landscape and hardscape modifications including the reconfiguration of the front entry path and steps, located at 109 King Avenue, Piedmont, California, which construction requires design review; and

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

1. The exterior design elements are aesthetically pleasing as a whole and harmonious with existing and proposed neighborhood development. These elements include, but are not limited to, the proposed stucco wall finish and the attractive new railings. There is no change to the height or bulk of the house.
2. The design is appropriate, considering its effect on neighboring properties' existing views, privacy and access to direct and indirect light, because the remodel doesn't include any changes to the bulk or height of the house and therefore does not impact the neighbors views, privacy or access to light.
3. The safety of residents, pedestrians, and vehicle occupants and the free flow of vehicular traffic are not adversely affected, considering the circulation pattern, parking layout and points of ingress and egress, because the redesigned entrance should improve the aesthetics without impacting the safety of the entrance.
4. The project complies with Design Review Guidelines II-1, II-2, II-3, II-3(a), II-3(b), II-3(c), II-3(d), II-5, II-5(a), II-6, II-6(a), II-6(b), II-6(c).

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review application for proposed construction at 109 King Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

1. **Window Color Scheme.** All the windows on the house shall have a consistent color scheme.
2. **Roof Color.** The proposed flat roof shall be a non-reflective medium or dark color to minimize the visual impact on upslope properties.
3. **Exterior Lighting.** All new exterior light fixtures shall be downward directed with an opaque or translucent shade that completely covers the light bulb.
4. **Garage Doors.** The garage doors shall be electronically operable. If design modifications are required to accomplish this, those modifications shall be subject to staff review.
5. **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.
6. **Defense of Legal Challenges.** If there is a third party administrative, legal or equitable action challenging the project approvals, including CEQA issues, the Property Owner shall defend and indemnify the City against any liability, fees and costs arising out of the defense, including the costs of City's own counsel. If such an action is filed, the Property Owner and City shall then enter into an agreement regarding selection of counsel and other provisions related to the defense. For this purpose, "City" includes the City and its elected and appointed officials, agents, officers and employees.
7. **Final Landscape Plan.** Before issuance of a building permit, the Property Owner shall submit for staff review and approval a Final Landscape Plan for the front and rear yards that shows trees proposed removal and

retention, in addition to other landscape materials. 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.

**8. 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.

**9. 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.

Moved by Ode, Seconded by Zhang  
Ayes: Ode, Simpson, Theophilos, Zhang  
Noes: None  
Recused:  
Absent: Behrens, Chase

**Variance**  
**206 San Carlos Avenue**

**Resolution 103-V-15**

WHEREAS, the Property Owner is requesting permission to add a full bathroom at the upper level, which creates two rooms eligible for use as a bedroom, located at 206 San Carlos Avenue, Piedmont, California. A variance from the requirements of Chapter 17 of the Piedmont City Code is necessary to add additional bedrooms without supplying conforming parking; and

WHEREAS, after reviewing the application, plans and any and all testimony and documentation submitted in connection with such application, and after having visited the 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

WHEREAS, the Planning Commission finds that the proposal complies with the variance criteria under Section 17.21.6 of the Piedmont City Code:

1. The underlying lot and existing improvements present unusual physical circumstances, including but not limited to: the existing parking is non-conforming and the two rooms in the upper level have historically been used as bedrooms. The project proposes no changes to the exterior of the house.
2. The variance is compatible with the immediately surrounding neighborhood and the public welfare, because the exterior of the house is not proposed to change and is compatible with the immediately surrounding neighborhood.
3. Accomplishing the improvements without variance would cause unreasonable hardship in planning, design, or construction, because, without this variance, the house does not have a full bathroom for the two upper level bedrooms.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the variance application for proposed construction at 206 San Carlos Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

**1. 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.

2. **Garage Door.** The garage door shall be electrically operable. If a new garage door is proposed to meet this requirement, it shall be subject to staff review and approval.

Moved by Zhang, Seconded by Simpson  
Ayes: Ode, Simpson, Theophilos, Zhang  
Noes: None  
Recused:  
Absent: Behrens, Chase

**PUBLIC FORUM**

There were no speakers for the public forum.

**REGULAR CALENDAR**

The Commission considered the following items of regular business:

**Variance and  
Design Review  
49 Wildwood Gardens**

The Property Owner is requesting permission to construct a new 965-square-foot, three-level addition at the rear of the house; make various window and door modifications; add exterior lighting; install a new skylight; and make interior improvements and reconfigurations. A variance is required to construct within the front yard setback.

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

**Public testimony** was received from:

Emi Sherman, Project Architect, described the existing house and its architectural limitations. She explained the proposed addition, which aims to create a more usable kitchen, improve interior circulation, and expand the size of the bedrooms. In response to questions from the Commission, Ms. Sherman explained that the applicants amended their initial design and lowered the roof by about six feet to address the neighbor's concerns over an impact on his view. Ms. Sherman also explained the variation in window design at the rear of the house, in response to a question from Commissioner Zhang.

Allison Allesio, homeowner, explained that the intent of the project is to make the house more functional.

The Commission was unanimous in its support of the addition and the variance request. The Commissioners commended the applicants on working with their neighbor to address concerns over existing views. They stated that the changes not only addressed the neighbor's concerns but were also appropriate for the overall design of the project. The Commission considered the variance to be appropriate, since the proposed construction is less non-conforming than the existing house. Commissioner Zhang suggested that the rear elevation be amended so that the style and proportion of the windows are more consistent and more in keeping with the architecture of the house.

**Resolution 55-V/DR-15**

WHEREAS, the Property Owner is requesting permission to construct a new 965-square-foot, three-level addition at the rear of the house; make various window and door modifications; add exterior lighting; install a new skylight; and make interior improvements and reconfigurations located at 49 Wildwood Gardens, Piedmont, California, which construction requires design review; and

WHEREAS, a variance from the requirements of Chapter 17 of the Piedmont City Code is necessary to construct within the front yard setback; and

WHEREAS, after reviewing the application, plans and any and all testimony and documentation submitted in connection with such application, and after having visited the 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

WHEREAS, with regard to variance, the Planning Commission finds that the proposal complies with the variance criteria under Section 17.21.6 of the Piedmont City Code:

1. The underlying lot and existing improvements present unusual physical 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, including but not limited to the following: the existing house is non-conforming with regard to the front yard setback, and the portion of the project proposed within the setback is less non-conforming than the existing house.
2. The variance is compatible with the immediately surrounding neighborhood and the public welfare, because 1) the roofline was lowered by approximately six feet to alleviate neighbor concerns; 2) the proposed addition is consistent with neighboring properties; and 3) the project has no impact on public welfare.
3. Accomplishing the improvements without variance would cause unreasonable hardship in planning, design, or construction, because the project would not be able to be constructed.

WHEREAS, with regard to design review, the Planning Commission finds that the proposal conforms with the criteria and standards of Section 17.20.9 of the Piedmont City Code:

1. The exterior design elements are aesthetically pleasing as a whole and harmonious with existing and proposed neighborhood development, in that, as conditioned, the addition is consistent with the style, materials, roof slopes, window design, and wall finishes of the existing house.
2. The proposed addition has been designed in a way that reasonably minimizes view and light impacts on neighboring properties, in that the roofline of the addition has been modified to alleviate any impacts to the neighbor.
3. The size and height of the addition is commensurate with the size of the lot and is in keeping with the existing neighborhood development pattern, because the proposed design, with its extended gable and shed roofs, is consistent with the existing house.
4. The safety of residents, pedestrians, and vehicle occupants and the free flow of vehicular traffic are not adversely affected, because there will be no impact.
5. The project complies with Design Review Guidelines II-1, II-2, II-3, II-3(a), II-3(b), II-3(c), II-3(d), 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 variance and design review application for proposed construction at 49 Wildwood Gardens, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

1. **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.

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. **Property Line Location.** A licensed land surveyor shall be required by the Building Department to verify and mark the location of the north property line at the time of foundation and/or frame inspection to verify the approved setback dimension measured to the new construction. At the Building Official's discretion, a licensed land surveyor may be required by the Building Department to verify and mark the location of the east property line at the time of foundation and/or frame inspection to verify the approved setback dimension measured to the new construction.

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

5. **Skylight.** The flashing around the new skylight shall be painted to match the color of the adjacent roof.

6. **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.

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



**7. 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.

**8. 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.

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

a. Construction Site Control of Stormwater. The California Regional Water Quality Control Board requires all projects that disturb the site to comply with Provision C.6 of the San Francisco Bay Regional Stormwater NPDES Permit in order to prevent construction site discharges of pollutants and other regulated materials during construction. As required by the Chief Building Official and prior to the issuance of a building permit, the Applicant shall develop and submit a construction stormwater management plan as part of the Construction Management Plan to achieve timely and effective compliance with Provision C.6. Permit Provision C.6.c.ii provides sources for site specific, and seasonally- and phase-appropriate, effective Best Management Practices (BMPs) that may be incorporated into the stormwater management plan. Copies of the Municipal Regional Stormwater Permit are available from the Piedmont Public Works Department and on-line at [cleanwaterprogram.org](http://cleanwaterprogram.org).

**10. 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.

**11. Window Design.** The rear windows shall be modified so that the type, proportion, placement, details, and materials of the new windows are compatible with the existing windows. Individual elements that should be addressed include the frame and pattern of light defined by the muntins. These changes shall be subject to staff review and approval.

Moved by Simpson, Seconded by Ode

Ayes: Ode, Simpson, Theophilos, Zhang

Noes: None

Recused:

Absent: Behrens, Chase

**Conditional Use Permit  
Modification  
1300 Grand Avenue**

Timothy W. Silk, on behalf of the Happy Together Preschool at the Kehilla Community Synagogue, is requesting a Conditional Use Permit at 1300 Grand Avenue. The Conditional Use Permit proposes to expand the capacity of the preschool from 15 children to 30 children, the staff from 5 to 7 (including part-time staff), and add three hours of operation in the afternoon: drop-off would remain at 8:00 am, and pick-up would change from 3:00 pm to 6:00 pm.

Written notice was provided to neighbors. **Six affirmative, three negative, and two response forms indicating no position were received. Correspondence** was received from: Anne Hawkins, Rachel and Mike Tucker, Adi Schacker, Clare Trimbur, Jay Koch, Rick Schiller, Ellen Dektar and Diana Feiger.

**Public testimony** was received from:

Monica Haddad, Director of Happy Together Preschool, explained that the proposal will help to provide childcare for families with parents who work full time and reported that 17% of kids in the program are from Piedmont families. She explained that the three designated parking spaces within the lot have been sufficient for morning drop-off, because students arrive at various times. She said that the addition of a later pick-up option will similarly spread the pick-ups over a longer period of time, which will help to relieve the traffic concerns during pick-up. She also stated that noise from children playing is at normal neighborhood levels, as the children do not play outside at the same time.

Timothy Silk, Associate Director of Happy Together Preschool, spoke in response to questions from Commissioners. He clarified that there are currently three dedicated parking spots within the parking lot for drop-off and pick-up, and stated that, if necessary, they would consider dedicating three more parking spaces to alleviate traffic concerns. He also stated that Piedmont residents are among those who receive priority enrollment at the school, but that most of the school's advertising has been done through the Berkeley Parents Network.

Judy Kriege, Program Director at Bananas, a Childcare Resource and Referral agency, reported on the local demand for childcare, especially full-time childcare. She also spoke in support of the Happy Together Preschool program and said that no other programs within Piedmont provide full-time childcare.

Anne Hawkins, Piedmont resident, spoke in favor of the application and explained the importance of full-time childcare for many working families.

The Commission supported the expansion of the Happy Together Preschool, citing the need for full-time childcare, and noting the community support expressed. However, they expressed some concern with traffic congestion and the low enrollment rate of Piedmont residents, and were in favor of recommending a condition of approval that would require 6 dedicated parking spaces, as opposed to 3, to relieve traffic concerns. They also discussed many ways to reach out to Piedmont residents so that the school can increase their enrollment of Piedmont families. The Commissioners were in favor of recommending a condition of approval to require additional outreach to Piedmont residents. They were also in favor of recommending that the conditional use permit term be 5 years, instead of 10, so that the issue of Piedmont resident enrollment could be revisited.

#### **Resolution 58-CUP-15**

WHEREAS, Timothy W. Silk, on behalf of the Happy Together Preschool at the Kehilla Community Synagogue, is requesting a Conditional Use Permit to expand the capacity of the preschool from 15 children to 30 children, the staff from 5 to 7 (including part-time staff), and add three hours of operation in the afternoon: drop-off would remain at 8:00 am, and pick-up would change from 3:00 pm to 6:00 pm, located at 1300 Grand Avenue, Piedmont, California; and

WHEREAS, the Piedmont Planning Commission has reviewed the application, the staff report, and any and all other documentation and testimony submitted in connection with the application and has visited the subject property; the Piedmont Planning Commission recommends that the project is categorically exempt under the California Environmental Quality Act, pursuant to Section 15301, Class 1(e) and the proposal conforms with the criteria and standards of Section 17.20.9 of the Piedmont City Code:

1. The proposed use is compatible with the General Plan and conforms to the zoning code, in that it is an expansion of the existing use, which conforms to the General Plan and zoning code.
2. The use is primarily intended to serve Piedmont residents, in that by expanding the hours of operation, the school expects to better serve the working families of Piedmont.
3. The use will not have a material adverse effect on the health, safety or welfare of persons residing or working in the vicinity, in that, as conditioned, the parking will be sufficient to reduce traffic concerns, and many of the neighbors are in support of the proposal.

RESOLVED, that in consideration of the findings and facts set forth above, the Piedmont Planning Commission recommends approval by the City Council of the Conditional Use Permit application by Timothy W. Silk, on behalf of the Happy Together Preschool at the Kehilla Community Synagogue, at 1300 Grand Avenue, Piedmont, California, subject to the following conditions:

1. **Terms of the Approval.** It is noted that no changes are proposed to any of the terms of the Kehilla Synagogue conditional use permit (#09-0143). The review period for Happy Together Preschool will be 5 years, and the terms of the approval for Happy Together Preschool will have the following operational characteristics:

School: Monday-Friday: **8:00 a.m. to 6:00 p.m.**

Types of School Staff/Students: **30 students, 7 staff**

The use of the Fairview Avenue entrance for drop-offs and pick-ups shall be prohibited.

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. **Dedicated Parking Spaces.** The number of dedicated parking spaces during times of pick-up and drop-off shall be increased from 3 spaces to 6 spaces.

4. **Piedmont Resident Outreach.** The applicants shall conduct outreach to Piedmont residents to encourage greater enrollment of Piedmont families. Such outreach may include: participating in the Piedmont July 4 parade, advertising in Piedmont papers or on local websites, distributing leaflets within Piedmont, and/or providing priority registration for Piedmont residents.

Piedmont enrollment levels are expected to grow and will be assessed during the next review of the conditional use permit.

Moved by Ode, Seconded by Zhang  
Ayes: Ode, Simpson, Theophilos, Zhang  
Noes: None  
Recused:  
Absent: Behrens, Chase

**Staff Design Review  
Deferred  
26 Manor Drive**

The Property Owner is seeking retroactive approval for windows at the front of the house at the basement level. The Staff Design Review application has been deferred to the Planning Commission for review.

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

**Public testimony** was received from:

Bernadette Joseph, homeowner, explained that the new basement windows at the front of her house add natural light to the mechanical room of her home. She stated that her contractor followed the guidance of the planning department and received neighbor approval for the windows. Ms. Joseph reported that she was notified that the design of the windows did not fit the Piedmont aesthetic and expressed her confusion over why the windows are of concern. In response to Commissioner's questions, Ms. Joseph explained that, while improving the foundation of the house, they decided to lower the basement floor and add an interior stair to make the basement more usable for storage. She stated that she understands that the basement cannot be used as habitable space and thought that the windows had been approved prior to their installation.

In response to questions from the Commission, Planning Director Kate Black explained the history of the application. She stated that the Planning Commission's recent approval for a large addition did not include the approval of any habitable space in the basement and that habitable space in the basement would have put the house over its floor area ratio (FAR) limit. She explained that the applicants have since lowered the basement floor to allow adequate ceiling height, added interior access to the basement, relocated mechanical equipment to one end of the room, and added new windows. She stated that the new windows, which are just short of meeting the natural light and ventilation requirements for habitable space, were installed without a permit, despite the contractor being told that design review was necessary. Planning Director Black also explained that the code allows for an expansion of the FAR beyond the FAR limit, but only if the expansion is completely within the envelope of the house and is not being done within three years of an approved addition, noting that the building permit for the large addition was issued in 2014. She added that the application is being deferred to the Planning Commission because of a concern that the new windows are misaligned with the existing windows on the front wall of the house. In response to the Commission's discussion, Planning Director Black reported that the Building Department has placed a notice of non-habitation on the basement.

The Commissioners discussed the use of the basement, the design of the windows, and the unpermitted installation of the windows. The Commissioners were all in support of the notice of non-habitation placed on the basement, given that additional habitable space was not allowed and the requirements of natural

light and ventilation had not been met. Chairman Theophilos was initially in support of the windows as constructed and expressed his opinion that a misunderstanding likely led to the installation of the windows without a permit. Commissioners Zhang, Simpson and Ode expressed concern that the windows had been installed without approval by the planning and building departments. They were also not in favor of the proposed design of the windows, stating that they were misaligned with the other windows on the front façade of the house, noting that the applicant's photographs of other front wall basement windows in the City were centered, and appropriate. After a long discussion, the Commission decided to place a condition of approval on the application requiring that the windows be redesigned to align with the windows directly above on the front façade.

**Resolution 75-DR-15**

WHEREAS, the Property Owner is seeking retroactive approval for windows at the front of the house at the basement level, located at 26 Manor 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 the subject property, the Piedmont Planning Commission finds that the project is categorically exempt under the California Environmental Quality Act, pursuant to Section 15301, Class 1(e) and the proposal conforms with the criteria and standards of Section 17.20.9 of the Piedmont City Code:

1. The exterior design elements are aesthetically pleasing as a whole and harmonious with existing and proposed neighborhood development. These elements include, but are not limited to, the new windows (as conditioned), which will be centered on the first floor windows and will be consistent with other windows in the neighborhood.
2. The design is appropriate, considering its effect on neighboring properties' existing views, privacy and access to direct and indirect light, because there will be no impact, and, as conditioned, the windows will be in keeping with the neighborhood.
3. The safety of residents, pedestrians, and vehicle occupants and the free flow of vehicular traffic are not adversely affected, considering the circulation pattern, parking layout and points of ingress and egress, because there will be no impact.
4. As conditioned, the project complies with Design Review Guideline II-3(b).

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review application for proposed construction at 26 Manor Road, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

1. **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.

2. **Notice of Restricted Use.** The room labeled "mechanical room" does not meet habitation or safety requirements of the Piedmont Municipal Code. A notice of restricted use shall be recorded with the Alameda County Recorder's office advising current and future owners that the space does not meet the safety codes for habitation nor sleeping purposes.

3. **Window Redesign.** The proposed windows shall be modified so that they align with the two windows above them on the main and upper levels, subject to staff review and approval.

Moved by Simpson, Seconded by Zhang  
Ayes: Ode, Simpson, Theophilos, Zhang  
Noes: None  
Recused:  
Absent: Behrens, Chase

The Commission recessed for dinner at 6:30 p.m. and reconvened at 7:00 p.m.

**Variance, Design  
Review, & Second  
Unit Permit Review  
327 Jerome Avenue**

The Property Owner is requesting permission to construct a new 496-square-foot, very low income, studio second unit above the existing garage. A variance is required in order to construct within the front yard setback, and a parking exception is requested for the second unit.

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

**Public testimony** was received from:

Catherine Knowland, homeowner, explained that the very low income second unit is proposed to provide housing for young adults within the family, to provide a living space for caregivers as she and her husband age in place, and to provide a source of income. She stated that they have no intention of using the unit as a short-term rental. Ms. Knowland explained that she and her husband would like the studio second unit to qualify as a very low-income unit and be granted a parking exception. She stated that an additional on-site parking spot would eliminate an on-street parking space and impact the mature trees in the parkway. She explained the efforts made to design an aesthetically pleasing unit and discuss the project with neighbors.

The Commission was unanimous in its support of the project. The Commissioners agreed that the project is aesthetically pleasing and in keeping with the existing design of the house. They noted that the neighbors were supportive of the project and that it benefited the community by providing a very low-income rental unit. The Commission was in full support of the setback variance approval, citing the pie-shaped lot and the prior garage setback variance approval, and the fact that the addition above it is proposed further back. They were also in full support of the parking exception, since the property is close to public transportation and an additional parking space would require removal of an on-street parking space.

**Resolution 97-SUP/V/DR-15**

WHEREAS, the Property Owner is requesting permission to construct a new 496-square-foot, very low-income, studio second unit above the existing garage located at 327 Jerome Avenue, Piedmont, California, which construction requires design review; and

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

WHEREAS, a parking exception is requested for the second unit; and

WHEREAS, after reviewing the application, plans and any and all testimony and documentation submitted in connection with such application, and after having visited the 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

WHEREAS, with regard to the setback variance, the Planning Commission finds that the proposal complies with the variance criteria under Section 17.21.6 of the Piedmont City Code:

1. The underlying lot and existing improvements present unusual physical circumstances, including but not limited to the odd, pie-shaped lot and the existing non-conforming garage. A setback variance was approved in 1967 for the existing garage.
2. The variance is compatible with the immediately surrounding neighborhood and the public welfare, because there are other two-story houses and other setback non-conformities within the neighborhood.
3. Accomplishing the improvements without variance would cause unreasonable hardship in planning, design, or construction, because the project would not be possible.

WHEREAS, with regard to design review, the Planning Commission finds that the proposal conforms with the criteria and standards of Section 17.20.9 of the Piedmont City Code:

1. The exterior design elements are aesthetically pleasing as a whole and harmonious with existing and proposed neighborhood development, in that the new windows are consistent with the windows of the existing house. The addition as a whole is aesthetically pleasing and in keeping with the existing house.
2. The design is appropriate, considering its effect on neighboring properties' existing views, privacy and access to direct and indirect light, because the second unit has no viewing ports or daylight shadow impacts on adjacent neighboring properties. Existing foliage and opaque glass protect neighbors' privacy.
3. The size and height of the addition is commensurate with the size of the lot and is in keeping with the existing neighborhood development pattern, because the massing and scale of the addition is in keeping with other houses in the neighborhood.



4. The safety of residents, pedestrians, and vehicle occupants and the free flow of vehicular traffic are not adversely affected, considering the circulation pattern, parking layout and points of ingress and egress, because there is no impact.

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

WHEREAS, with regard to the parking exception, the Planning Commission finds that the proposal conforms with the criteria and standards of Section 17.40.7(c)(ii) of the Piedmont City Code:

1. There is sufficient street parking available to accommodate the parking exception and the second unit is located within 1/3 mile of public transit stops on Oakland and Grand Avenues.

2. The exception will not negatively impact traffic safety or emergency vehicle access to residences, in that its location is appropriate.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the variance, design review and parking exception application for proposed construction at 327 Jerome Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

1. **Second Unit Declaration.** In compliance with §17.40.6.g, prior to the issuance of a building permit, the completed, signed and notarized *Declaration of Restrictions - Property with Approved Second Dwelling Unit* form shall be recorded.

2. **Declaration of Rent Restriction.** In compliance with §17.40.7.c.3.i.a, a Declaration of Rent Restriction (in a form provided by the City) shall be recorded stating that the unit is rent-restricted as a very low income unit. The rent-restriction shall be recorded in the County Recorder's Office, and shall remain in effect for ten years. The ten-year period of rent restriction begins either: (a) on the date of recordation or date of final building inspection, whichever is later; or (b) according to the terms of the conditions of approval or a recorded declaration. If, after ten years, the termination of the recorded declaration is not automatic (by its terms), the City shall record a document terminating the declaration of rent restrictions, upon the written request of the property owner.

3. **Affordable Rent Certification.** In compliance with §17.40.7.c.3.i.b, prior to the occupancy of the rent-restricted unit, an owner who has executed a Declaration of Rent Restriction shall submit to the City a Second Unit Affordable Rent Certification (in a form provided by the City), and thereafter (i) on an annual basis, by each December 31 and as part of the annual City business license application and renewal; and (ii) upon any change in occupancy of the second unit. The second unit affordable rent certification shall be on a form provided by the City and shall specify whether or not the second unit is being occupied; the rent charged; the utilities that are included in the cost of rent; the household size of the second unit; the names and ages of the second unit occupants; the gross household income of the second unit household; and other information as determined appropriate by the City.

4. **Building Code Compliance.** A 1 hour separation is required between the new second unit and the existing residence. All other building Code must be met.

5. **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.

6. **Contractor's General Liability Insurance.** To ensure that the contractor doing work in the City will be responsible for damages caused by the work to City property or to neighboring property, the Property Owner shall require all contractors 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.

7. **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.

8. **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.

9. **Approved Plan Set.** The approved plans are those submitted on March 13, 2015 with revised sheets submitted on March 25, 2015.

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

- a. Construction Site Control of Stormwater. The California Regional Water Quality Control Board requires all projects that disturb the site to comply with Provision C.6 of the San Francisco Bay Regional Stormwater NPDES Permit in order to prevent construction

site discharges of pollutants and other regulated materials during construction. As required by the Chief Building Official and prior to the issuance of a building permit, the Applicant shall develop and submit a construction stormwater management plan as part of the Construction Management Plan to achieve timely and effective compliance with Provision C.6. Permit Provision C.6.c.ii provides sources for site specific, and seasonally- and phase-appropriate, effective Best Management Practices (BMPs) that may be incorporated into the stormwater management plan. Copies of the Municipal Regional Stormwater Permit are available from the Piedmont Public Works Department and on-line at [cleanwaterprogram.org](http://cleanwaterprogram.org).

**11. 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.

Moved by Simpson, Seconded by Zhang  
Ayes: Ode, Simpson, Theophilos, Zhang  
Noes: None  
Recused:  
Absent: Behrens, Chase

**Variance and  
Design Review  
96 Maxwellton Road**

The Property Owner is requesting permission to remodel and expand the house by approximately 1,014 square feet through the following alterations: the construction of a main-level addition on the east side of the house; the construction of a main- and lower-level addition on the west side of the house; a 21-square-foot addition to the north side of the garage; the replacement of the exterior siding material; the relocation of the lower-level stair and landing in the west side yard; window and door modifications throughout; the installation of two new skylights, a new garage door, and new exterior lighting; hardscape modifications; and the development of habitable space within the lower level and various other interior changes. Two variances are required in order to exceed the structure coverage limit and to construct within the 20-foot setback from the rear property line.

Written notice was provided to neighbors. **Four negative response forms and one response form indicating no position** were received.

**Public testimony** was received from:

Catherine Roha, the Architect representing the Project, discussed the proposed variances. She explained that the setback variance is minor and is proposed to expand the garage by one foot to make it comply with the parking requirement and to incorporate a seismic upgrade. She explained that the structure coverage variance is required to expand the small bedrooms, and that the house exceeds the structure coverage limit because of significant deck area needed for outdoor living on the steeply sloped property. She offered that the applicants could remove the unnecessary trellis on the east patio to decrease the structure coverage by 2.2%.

Wei Wann, homeowner, explained that the bedrooms and bathrooms in the house are currently very small, and that they are proposing to expand the house to make it more livable for their family. She explained that the proposed additions have a minimal impact on neighbors, due to their location and the use of double-paned windows and sound-proof walls.

Shuning Wann, homeowner, expressed his love for the property and his family's intentions of improving the property. He reiterated that a significant portion of the house's structure coverage is due to the decks on the property. He stated that they would consider reducing the footprint of the addition to appease the neighbor to the West.

Jack Preston, neighbor, described the close proximity of the houses on Maxwellton Road and the narrow, windy street. He expressed his concern that the project will further impact parking on a difficult street. He also expressed his concern with turning the small bungalow into a large house, especially given the small lot and shared driveway.

Mila Magallanes, neighbor, spoke in opposition to the proposed structure coverage variance and discussed past troubles with noise coming from the

property. She spoke in support of many of the proposed improvements, including the bathroom remodel, new windows, and new landscaping.

Fred Keeler, neighbor, spoke in support of the remodel, but in opposition of the expansion. He stated that the expansion would result in a loss of light and privacy for his house. Mr. Keeler submitted photographs showing the close proximity of his house to the proposed addition. He also expressed concern for a loss of mature vegetation and additional noise.

Joan Anspach, neighbor, stated that the proposed expansion does not significantly impact her property. However, she expressed her concern for the applicants' landscape and explained the difficulties that she has had with the applicants' trees encroaching on her view. She suggested that a condition be placed on the application to require a landscape plan that identifies appropriate plantings to maintain both privacy and existing views.

The Commissioners were in support of certain aspects of the project, such as the garage expansion, interior remodel, and façade improvements; however, they agreed that the project as a whole was not approvable at this time. The Commission was especially opposed to the structure coverage variance, due to the unnecessary nature of the expansion in excess of the limits set by the Municipal Code, the close proximity of neighbors, and the significant impacts that the expansion would have on the neighbors. The Commission suggested the following for any future applications: 1) the structure coverage should not exceed 40%; 2) the design should make better use of the existing envelope and/or footprint of the house; and 3) the design should significantly reduce the impacts on neighbors. The Commissioners suggested that the applicants work more closely with their neighbors to address their concerns.

**Resolution 98-V/DR-15**

WHEREAS, the Property Owner is requesting permission to remodel and expand the house by approximately 1,014 square feet through the following alterations: the construction of a main-level addition on the east side of the house; the construction of a main- and lower-level addition on the west side of the house; a 21-square-foot addition to the north side of the garage; the replacement of the exterior siding material; the relocation of the lower-level stair and landing in the west side yard; window and door modifications throughout; the installation of two new skylights, a new garage door, and new exterior lighting; hardscape modifications; and the development of habitable space within the lower level and various other interior changes, located at 96 Maxwelton Road, Piedmont, California, which construction requires design review; and

WHEREAS, two variances from the requirements of Chapter 17 of the Piedmont City Code are necessary in order to exceed the structure coverage limit and construct within the 20-foot setback from the rear property line; and

WHEREAS, after reviewing the application, plans and any and all testimony and documentation submitted in connection with such application, and after having visited the subject property, the Piedmont Planning Commission finds that the currently proposed project does not comply with the variance criteria under Section 17.21.6 of the Piedmont City Code:

1. The underlying lot and existing improvements do not present unusual physical circumstances, including, but not limited to, the fact that the lot is of adequate

size, the existing house is not beyond the structure coverage limit for the property, and space within the existing envelope of the house can be better developed to create more living space. With such a cramped neighborhood, strictly applying the terms of this chapter would help to maintain the parking, privacy and natural light of the neighboring properties.

2. The structure coverage variance is not compatible with the immediately surrounding neighborhood and the public welfare, because the proposed expansions would adversely impact the privacy and natural light of the neighbors.

3. Accomplishing the improvements without variance would not cause unreasonable hardship in planning, design, or construction.

4. With regards to the setback variance at the garage, there is an unusual physical circumstance related to the alley and shared driveway, which may make a setback variance approvable in the future, subject to the overall design of the project meeting Design Review criteria.

WHEREAS, with regard to design review, the Planning Commission finds that the currently proposed project does not comply with the criteria and standards of Section 17.20.9 of the Piedmont City Code:

1. The exterior design elements are aesthetically pleasing, but as a whole the project is not harmonious with existing and proposed neighborhood development. The addition is oversized and the distance between the addition and adjacent residences is not reasonable and not appropriate due to the close proximity of the applicants' house and neighboring houses. The proposed upper level addition creates a large mass that results in a loss of ambient and reflected light for the neighboring property at 60 Maxwellton Road.

2. The proposed addition has not been designed in a way that reasonably minimizes view and light impacts on neighboring properties, because the expansions will create a light and view impact on the neighboring property at 60 Maxwellton Road.

3. The size and height of the addition is not commensurate with the size of the lot and is not in keeping with the existing neighborhood development pattern, because the proposal exceeds the structure coverage allowed on the site.

4. The safety of residents, pedestrians, and vehicle occupants and the free flow of vehicular traffic are not adversely affected by the proposed project.

5. The project does not comply with Design Review Guidelines II-1, II-2, II-3, 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 denies, without prejudice, the variance and design review application for proposed construction at 96 Maxwellton Road, Piedmont, California, in accordance with the plans and specifications on file with the City.

Moved by Zhang, Seconded by Ode

Ayes: Ode, Simpson, Theophilos, Zhang

Noes: None

Recused:  
Absent: Behrens, Chase

**ADJOURNMENT**

There being no further business, Chairman Theophilos adjourned the meeting at 8:20 p.m.