

## **PIEDMONT PLANNING COMMISSION**

### **Regular Meeting Minutes for Monday, December 14, 2015**

A Regular Session of the Piedmont Planning Commission was held December 14, 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 November 30, 2015.

#### **CALL TO ORDER**

Chairman Theophilos called the meeting to order at 5:03 p.m.

#### **ROLL CALL**

Present: Commissioners Eric Behrens, Philip Chase, Susan Ode, Tony Theophilos and Tom Zhang, and Alternate Commissioner Tom Ramsey

Staff: Interim Planning Director Kevin Jackson, Assistant Planners Jennifer Gavin and Emily Alvarez, and Planning Technician Sunny Chao

Absent: Council Liaison, Councilmember Tim Rood

#### **PUBLIC FORUM**

There were no speakers for the public forum.

#### **REGULAR SESSION**

The Commission considered the following items of regular business:

##### **Approval of Minutes**

Commissioner Behrens requested that the November 9, 2015, meeting minutes be corrected to show that he recused himself from the vote on Resolution 26-PL-15, a resolution appointing him as Vice Commission Chair.

##### **Resolution 31-PL-15**

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

Moved by Behrens, Seconded by Chase

Ayes: Behrens, Chase, Ode, Theophilos, Zhang

Noes: None

Recused:

Absent:

##### **Consent Calendar**

The Commission initially placed the following applications on the Consent Calendar:

- 28 Sylvan Way (Fence Design Review)
- 17 Sotelo Avenue, Rear Lot (Design Review and Fence Design Review)
- 38 Monte Avenue (Variance, Design Review, and Fence Design Review)

##### **Resolution 32-PL-15**

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

Moved by Chase, Seconded by Zhang

Ayes: Behrens, Chase, Ode, Theophilos, Zhang

Noes: None

Recused:

Absent:

In response to a request from the public to remove 38 Monte Avenue from the Consent Calendar, the Commission amended the Consent Calendar to include the following applications:

- 28 Sylvan Way (Fence Design Review)
- 17 Sotelo Avenue, Rear Lot (Design Review and Fence Design Review)

**Resolution 33-PL-15**

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

Moved by Chase, Seconded by Zhang

Ayes: Behrens, Chase, Ode, Theophilos, Zhang

Noes: None

Recused:

Absent:

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

**Fence Design Review  
28 Sylvan Way**

**Resolution 348-DR-15**

WHEREAS, the Property Owner is requesting permission to rebuild an existing staircase along the left (west) side yard with modifications to the guardrail and handrail and to make modifications to a gate and fence along the west property line, within the 20 foot front (south) setback, located at 28 Sylvan Way, 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 CEQA Guidelines Section 15301, Class 1(e) and the proposal conforms with the criteria and standards of Section 17.20.9(a) 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 side fence and stair.
2. The design is appropriate, considering its effect on neighboring properties' existing views, privacy and access to direct and indirect light, because the stairs are concealed from view from the public way.
3. The safety of residents, pedestrians, and vehicle occupants and the free flow of vehicular traffic are not adversely affected, because they are not affected.
4. The project complies with Design Review Guidelines 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 28 Sylvan Way, 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 November 12, 2015 with additional information received on December 2, 2015, after notices to neighbors were mailed and the application was available for public review.

2. **Fence Location.** The new fence, including all footings and posts, shall be located completely within the applicants' property. At the discretion of the Building Official, a licensed land surveyor may be required by the Building Department to verify and mark the location of the property lines at the time of foundation inspection to verify the approved setback dimension measured to the new fence and that it is completely within the applicants' property. In lieu of a survey, a fence location agreement with the neighboring property may be submitted.

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.

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

**Design Review and  
Fence Design Review  
17 Sotelo Avenue  
Rear Lot**

The Planning Commission approved related improvements to the front lot of 17 Sotelo Avenue with Resolution 366-DR-15, which was on the Regular Calendar.

**Resolution 365-DR-15**

WHEREAS, the Property Owner is requesting permission to make the following improvements to the rear lot: to renovate the existing pool by adding a spa and water feature, retiling, constructing a new pool deck, and enlarging the existing pool enclosure; to construct a new outdoor kitchen adjacent to the pool with a trellis and outdoor fan; and to rebuild the existing fence along Glen Alpine Road on the rear (west) property line. The Property Owner is requesting to make additional modifications to site improvements, including stairs, guardrails, handrails, planters, on-grade improvements, retaining walls, and landscaping; to replace the existing fences along the right (north) and left (south) property lines; and to install new exterior lighting throughout the rear property, located at 17 Sotelo 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 CEQA Guidelines Section 15301, Class 1(e) and the proposal conforms with the criteria and standards of Section 17.20.9(a) 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: large formal gardens with elaborate pathways and multi-layered patios that are consistent with the downhill slope and the original Georgian style 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 are no affects with respect to these issues.
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 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-4, V-5, V-5(a), V-5(b), V-6.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review application for proposed construction on the rear lot of 17 Sotelo, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

1. **Fence Location.** The new fences, including all footings and posts, shall be located completely within the applicants' property. Prior to foundation inspection, the applicant shall submit to the Building Official written verification by a licensed land surveyor stating that the construction is located at the setback dimension from the north, east, west, and south property lines as shown on the approved plans. The intent is to verify that the approved features are constructed at the approved dimension from the property lines. For the right (north) and left (south) fences, a fence location agreement with the neighboring properties may be submitted in lieu of a survey.

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

3. **Final Landscape Plan.** Before issuance of a building permit, the Property Owner shall submit for staff review and approval a Final Landscape Plan that shows trees proposed for retention as well as in-lieu trees required by a Certified Tree Preservation Plan. The final plan shall comply with Municipal Code Section 17.17.3, and shall not propose plants near the driveway that could obscure visibility of pedestrians on the sidewalk or vehicles on the street from drivers backing out of the driveway.

**4. California's Water Efficient Landscape Ordinance:** Property Owner shall comply with the requirements of California's Model Water Efficient Landscape Ordinance that went into effect December 1, 2015, by submitting the following required information to the Building Department:

- a. Landscape Documentation Package that includes the following 6 items:
  - i. Project Information;
  - ii. Water Efficient Landscape Worksheet;
  - iii. Soil Management Report;
  - iv. Landscape Design Plan;
  - v. Irrigation Design Plan; and
  - vi. Grading Design Plan.

The Landscape Documentation Package is subject to staff review and approval before the issuance of a building permit.

- b. Once a building permit has been issued, the Property Owner shall submit a copy of the Water Efficient Landscape Worksheet, to the local water purveyor, East Bay Municipal Utility District.

- c. After completion of work, the Property Owner shall submit to the City and East Bay Municipal Utility District a Certificate of Completion, including an irrigation schedule, an irrigation maintenance schedule, and an irrigation audit report . The City may approve or deny the Certificate of Completion.

**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. 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.

**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, 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).

**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.

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 Chase, Seconded by Ode  
Ayes: Behrens, Chase, Ode, Theophilos, Zhang

Noes: None  
Recused:  
Absent:

**Regular Calendar**

The Commission considered the following items as part of the Regular Calendar:

**Cultivation,  
Dispensing & Delivery  
of Marijuana**

Interim Planning Director Jackson explained that State Assembly Bills 243 and 266 and State Senate Bill 643, which were signed into law in October 2015, govern the cultivation, testing, and distribution of medical marijuana, the manufacturing of marijuana products, and physician recommendations for medical marijuana. He explained that the new legislation preserves local control over marijuana facilities and land uses, including the authority to prohibit dispensaries and other marijuana businesses completely. However, two provisions in the new legislation require cities to adopt and implement a corresponding land use ordinance before March 1, 2016, to retain full local control. Interim Planning Director Jackson explained that the proposed code amendments would prohibit marijuana dispensaries and marijuana cultivation facilities, and restrict marijuana deliveries in the City.

Chief of Police Rikki Goede explained that the State has seen a host of public safety issues since the legalizing of medical marijuana in 1996. She explained that the new legislation closes many of the loopholes that existed in the initial legislation and further regulates medical marijuana. She explained that, under the new legislation, local regulations are permitted to be more stringent than the state regulations.

In response to questions from the Commission, Interim Planning Director Jackson explained that the proposed ordinance is a land-based regulation and would be enforced in the same manner as other land-based regulations. He clarified that marijuana-related criminal activity is already addressed under state law and enforced by the police. In response to questions from the Commission, Chief Goede reported on the City's current state of marijuana use and related crime, and she clarified that synthetic drugs are completely illegal and not addressed by this ordinance. She also explained that the ordinance only allows delivery of medical marijuana by an employee of a licensed dispensary and allows for medical marijuana to be delivered to people who are bedridden.

**Public testimony** was received from:

Isaac Lee, a Piedmont High School Student, spoke in support of the proposed ordinance. He reported on the increased availability of marijuana in the community and expressed support for restricting its availability.

The Commission was in favor of recommending approval of the proposed ordinance to the City Council. In response to a suggestion by Commissioner Chase, the Commission discussed whether to recommend a complete ban on the delivery of medical marijuana within the City or a prohibition of synthetic marijuana products. The Commission ultimately decided to approve the ordinance as written, with a small typographic correction suggested by Commissioner Chase, and to encourage the Council to revisit the issue of the delivery of medical marijuana at a later date.

**Resolution 34-PL-15**

RESOLVED, that the Planning Commission recommends that the City Council adopt the proposed Code amendments (Section 17.41 Marijuana Facilities) with one small typographic correction in Section 17.41.2(d).

Moved by Chase, Seconded by Ode

Ayes: Behrens, Chase, Ode, Theophilos, Zhang

Noes: None

Recused:

Absent:

**Fence Design Review  
231 Sandringham Rd**

The Property Owner is requesting permission to retain and extend the existing wood fence on the north (right) side of the property and construct a new stucco wall with a wood gate and arbor enclosing the front yard.

Written notice was provided to neighbors. **Six affirmative and one negative response forms** were received. **Correspondence** was received from: Stephanie Fox.

**Public testimony** was received from:

Genevieve Klyce, homeowner, responded to questions from the Commission. She explained that the purpose of the new wall and fence is to keep kids safe in the front yard and to improve the yard's privacy. She stated that the new stucco wall is proposed to match the house and be surrounded by plants, and she clarified that the current proposal is for a four-foot high wall with no cap.

The Commissioners were in favor of approving the application with several modifications. They discussed the design of the wall and agreed that a cap should be added to the wall. The Commissioners also discussed the appropriateness of the wall's location and decided that the wall should be set back at least 10 feet to be more in keeping with the neighborhood.

**Resolution 363-DR-15**

WHEREAS, the Property Owner is requesting permission to retain and extend the existing wood fence on the north (right) side of the property and construct a new stucco wall with a wood gate and arbor enclosing the front yard, located at 231 Sandringham 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 CEQA Guidelines Section 15301, Class 1(e) and the proposal conforms with the criteria and standards of Section 17.20.9(a) 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 style of the wall, which, as conditioned, is in keeping with the Spanish Colonial architectural style of the house. As conditioned, the wall will be set back 10 feet, which is consistent with neighboring properties.



2. The design is appropriate, considering its effect on neighboring properties' existing views, privacy and access to direct and indirect light, because, as conditioned, the 10-foot setback will allow the neighbor to the north to have a view of the street and sidewalk.
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 proposal includes pedestrian access to the property and provides sufficient safety for use of the yard and adjacent driveway.
4. The project complies with Design Review Guidelines 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 231 Sandringham Road, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

1. **Fence Location.** The new fence, including all footings and posts, shall be located completely within the applicants' property. At the discretion of the Building Official, a licensed land surveyor may be required by the Building Department to verify and mark the location of the property lines at the time of foundation inspection to verify the approved setback dimension measured to the new fence and that it is completely within the applicants' property. In lieu of a survey, a fence location agreement with the neighboring property may be submitted.

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. **Approved Plan Set.** The approved plans are those submitted on December 8, 2015, after notices to neighbors were mailed and the application was available for public review.

4. **Wall Design.** The proposed wall shall be consistent in color scheme with the house and shall include a cap that shall be consistent with the Spanish Colonial architectural style of the house, subject to staff approval.

5. **Wall Location.** The proposed wall shall be set back a minimum of 10 feet from the front property line, subject to staff approval.

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

**Design Review and  
Fence Design Review  
17 Sotelo Avenue  
Front Lot**

The Property Owner is requesting permission to make the following improvements to the front lot: to install a new fence and entry gate in the front yard; to replace and enlarge the front entry walk; to construct a new trash enclosure along the right (north) property line; to construct a new dining terrace in the rear yard with a built-in counter, seating, grill, and bar; to replace an existing window with a new door and a staircase connecting the house to the new dining terrace; and to install a new built-in fireplace and seating area. The Property Owner is requesting to make additional modifications to site improvements, including stairs, guardrails, handrails, planters, on-grade improvements, retaining walls, and landscaping; to replace the existing fences along the right (north) and left (south) property lines; and to install new exterior lighting throughout the front property.

The Planning Commission approved related improvements to the rear lot of 17 Sotelo Avenue with Resolution 365-DR-15, which was on the Consent Calendar.

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

**Public testimony** was received from:

Rani Batra, homeowner, introduced herself and welcomed any questions from the Commission.

David Thorne, Project Landscape Architect, described the changes proposed to the front lot, including modifications to the front and rear yards and the installation of a new front yard fence. Mr. Thorne also clarified the location of the proposed south fence.

The Commission was generally in support of the project and commended the designers for a well-designed project. The Commission was divided, however, in its support of the proposed front fence. Commissioners Zhang and Ode were not in support of the front fence, given the small size of the front yard and the general lack of front-yard fences in the neighborhood. They also referred to the City's Design Guidelines, which encourage front yards to remain open to the neighborhood. Commissioners Behrens, Chase, and Theophilus were in favor of the proposed wrought-iron fence at the front of the property, given its open and attractive design, and they made note of several front-yard walls in the neighborhood.

**Resolution 366-DR-15**

WHEREAS, the Property Owner is requesting permission to make the following improvements to the front lot: to install a new fence and entry gate in the front yard; to replace and enlarge the front entry walk; to construct a new trash enclosure along the right (north) property line; to construct a new dining terrace in the rear yard with a built-in counter, seating, grill, and bar; to replace an existing window with a new door and a staircase connecting the house to the new dining terrace; and to install a new built-in fireplace and seating area. The Property Owner is requesting to make additional modifications to site improvements, including stairs, guardrails, handrails, planters, on-grade improvements, retaining walls, and landscaping; to replace the existing fences along the right (north) and left (south) property lines; and to install new exterior lighting throughout the front property, located at 17 Sotelo 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 CEQA Guidelines Section 15301, Class 1(e) and the proposal conforms with the criteria and standards of Section 17.20.9(a) 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 front yard fence is aesthetically pleasing and appropriately sized; it follows the slope of the property; and an existing boxwood hedge fronts it. The proposed rear patio is aesthetically pleasing and is an improvement over the existing patio.
2. The design is appropriate, considering its effect on neighboring properties' existing views, privacy and access to direct and indirect light, because it has no impact on them.
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(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, 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 on the front lot of 17 Sotelo, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

1. **Door Material.** As specified in the plans, the building material for the new door shall be wood.
2. **Fence Location.** The new fences, including all footings and posts, shall be located completely within the applicants' property. Prior to foundation inspection, the applicant shall submit to the Building Official written verification by a licensed land surveyor stating that the construction is located at the setback dimension from the north, east, west, and south property lines as shown on the approved plans. The intent is to verify that the approved features are constructed at the approved dimension from the property lines. For the right (north) and left (south) fences, a fence location agreement with the neighboring properties may be submitted in lieu of a survey.
3. **Stormwater Design.** The California Regional Water Quality Control Board requires all projects, or a combination of related projects, that create and/or replace 2,500 square feet or more of impervious surface to comply with Provision C.3.i of the Municipal Regional Stormwater NPDES Permit. As required by the Chief Building Official, the Property Owner shall verify the total area of impervious surface to be created and/or replaced within the scope of this project, or this project combined with other related projects and/or permits, and

incorporate the site design measure(s) required under Provision C.3.i into the plans submitted for a building permit. Copies of the Municipal Regional Stormwater Permit are available from the Piedmont Public Works Department and on-line at [cleanwaterprogram.org](http://cleanwaterprogram.org).

**4. Final Landscape Plan.** Before issuance of a building permit, the Property Owner shall submit for staff review and approval a Final Landscape Plan that shows trees proposed for retention as well as in-lieu trees required by a Certified Tree Preservation Plan. The final plan shall comply with Municipal Code Section 17.17.3, and shall not propose plants near the driveway that could obscure visibility of pedestrians on the sidewalk or vehicles on the street from drivers backing out of the driveway.

**5. California's Water Efficient Landscape Ordinance:** Property Owner shall comply with the requirements of California's Model Water Efficient Landscape Ordinance that went into effect December 1, 2015, by submitting the following required information to the Building Department:

a. Landscape Documentation Package that includes the following 6 items:

- i. Project Information;
- ii. Water Efficient Landscape Worksheet;
- iii. Soil Management Report;
- iv. Landscape Design Plan;
- v. Irrigation Design Plan; and
- vi. Grading Design Plan.

The Landscape Documentation Package is subject to staff review and approval before the issuance of a building permit.

b. Once a building permit has been issued, the Property Owner shall submit a copy of the Water Efficient Landscape Worksheet, to the local water purveyor, East Bay Municipal Utility District.

c. After completion of work, the Property Owner shall submit to the City and East Bay Municipal Utility District a Certificate of Completion, including an irrigation schedule, an irrigation maintenance schedule, and an irrigation audit report . The City may approve or deny the Certificate of Completion.

**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. 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. 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).

**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.

10. **Approved Plan Set.** The approved plans are those submitted on November 20, 2015 with revised existing and proposed southwest elevations provided on December 14, 2015 omitting the garage roof guardrail, after notices to neighbors were mailed and the application was available for public review.

11. **Fence Location.** The fence along the south property line shall be located two feet from the retaining wall, as discussed by the applicants.

Moved by Behrens, Seconded by Chase

Ayes: Behrens, Chase, Theophilos

Noes: Ode, Zhang

Recused:

Absent:

**Design Review  
110 St. James Drive**

The Property Owner is requesting permission to construct an approximately 385-square-foot, one-story addition to the southwest side of the house, make modifications to the deck in the rear yard with built-in seating and a fire pit, make various modifications to site improvements including stairs, guardrails, handrails, planters, on-grade improvements, retaining walls, and landscaping; and to make various modifications throughout the exterior of the house including: roofing materials, windows and doors, siding materials, and exterior lighting.

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

**Public testimony** was received from:

Joan Diengott and Laurie Chase, Project Architects, explained that the proposed painting studio was designed to have as little visual impact on the neighbors as possible. Ms. Diengott described how the siting of the addition, the proposed vegetation, and the window design minimize any privacy impacts on the neighbors. In response to questions from the Commission, Ms. Chase described the proposed roofing material.

The Commissioners were unanimously in support of the project, stating that the proposed changes are attractive and will improve the aesthetics of the house. Commissioner Chase acknowledged the concerns of the adjacent neighbor, but stated that the proposed vegetative screening should ameliorate any privacy concerns.

**Resolution 371-DR-15**

WHEREAS, the Property Owner is requesting permission to construct an approximately 385-square-foot, one-story addition to the southwest side of the house, make modifications to the deck in the rear yard with built-in seating and a fire pit, make various modifications to site improvements including stairs, guardrails, handrails, planters, on-grade improvements, retaining walls, and landscaping; and to make various modifications throughout the exterior of the house including: roofing materials, windows and doors, siding materials, and exterior lighting, located at 110 St. James Drive, 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 CEQA Guidelines Section 15301, Class 1(e) and the proposal conforms with the criteria and standards of Section 17.20.9(a) 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 roofing material and color, windows and doors, siding material, and exterior lighting. The proposed changes to the existing house and the proposed addition are attractive.
2. The design is appropriate, considering its effect on neighboring properties' existing views, privacy and access to direct and indirect light, because the proposed addition has little impact on views. Proposed landscaping is adequate for limiting the impacts on the adjacent neighbor.
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 new guardrails and handrails will make the house safer, and access to the property is unchanged.
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-5(a), II-6, II-6(a), II-6(b), II-6(c), II-7(a), III-1(a), III-2, III-2(a), III-3, III-4, III-5, III-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 110 St. James Drive, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

1. **Window and Door Material.** As specified in the plans, the building material for the new windows shall be metal and doors shall be metal or wood.
2. **Window Color Scheme.** All the windows on the house shall have a consistent color scheme.
3. **Roof Color.** The proposed roof colors shall be a non-reflective medium or dark color to minimize the visual impact on upslope properties.

4. **Final Landscape Plan.** Before issuance of a building permit, the Property Owner shall submit for staff review and approval a Final Landscape Plan that shows trees proposed for retention as well as in-lieu trees required by a Certified Tree Preservation Plan. The final plan shall comply with Municipal Code Section 17.17.3, and shall not propose plants near the driveway that could obscure visibility of pedestrians on the sidewalk or vehicles on the street from drivers backing out of the driveway.

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. **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).

7. **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.

**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.

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

**New House & Fence  
Design Review  
14 Lorita Avenue**

The Property Owner is requesting permission to demolish the existing 1,404-square-foot, 2-bedroom, 1-bath house and construct a new two-story house with basement below. The new house is proposed to have 3,102 square feet of habitable space that includes 4 bedrooms, 4 full bathrooms, 1 half bathroom, a kitchen/family great room, dining room, living room, office, and basement 2-car garage with storage area. Proposed exterior features include windows and doors throughout, skylights, a rear deck, decorative iron work, exterior lighting, and landscape and hardscape modifications that include a new driveway, curb cut, entry path, and retaining walls in the front yard.

Written notice was provided to neighbors. **Five affirmative, two negative, and one response form** indicating no position were received. **Correspondence** was received from: Kirsten Merit; Anthony Swei and Heather Chan; and Tom, April, Devan, Ian, Stella, Sebastian, and Scarlett Joseph

**Public testimony** was received from:

Tom Joseph, Applicant, explained that he lives next door to the proposed house and that he is building the house for his parents. He explained that the design of the house is meant to accommodate his aging parents and to provide interior and exterior spaces for the family to gather. He stated that the house is not proposed to be as close to the neighbor at 10 Lorita Avenue as the code allows, so as to lessen its impact on the neighbor.

Bernadette Joseph, the sister of the applicant, spoke about the application. She stated that the application requests no variances and will be an asset to the neighborhood.

Debra Yau, Project Architect, described the architectural context of the neighborhood, which she said includes a scattering of Spanish Mediterranean houses. She also described the design details and materials of the proposed house. She explained that she designed the house to be considerate of the adjacent neighbors by limiting the size of the windows that face 10 Lorita Avenue, increasing the side yard setback, minimizing the slope of the roof, and proposing vegetation for privacy. She also stated that, in response to conversations she had with Heather Chan from 10 Lorita Avenue, she agreed to lower the overall height of the house by two feet and move the front of the house back by 11 inches to match the existing setback. Ms. Yau responded to questions from the Commission regarding details of the design and seemed willing to consider making design changes, if necessary. However, in response to a question from the Commission, she said that flipping the floor plan was not possible due to the existing topography.

Juan Perez, Project Contractor, explained his plans for deconstructing the existing house mostly by hand and reusing an estimated 60% of the existing building materials. He also stated that the proposed house is similar in scale to other houses in the neighborhood and discussed the minimal impact that the new house will have on the adjacent neighbor.

Anthony Swei, Neighbor at 10 Lorita Avenue, spoke in opposition to the scale of the proposed house and discussed the massiveness of the east wall that will face his house. He argued that the new house would have a significant impact on his light, by blocking an estimated 70-80% of the existing light. Mr. Swei also spoke in opposition to the proposed style of the house, which he stated is out of context with the surrounding neighborhood and therefore does not meet City standards. He indicated that he was not on board with any last minute design changes that the architect made to address his concerns. In response to a question from Commissioner Theophilos, Mr. Swei suggested that the design of the house would be more acceptable if its "L" shape were flipped, if the side yard setback were greater, or if the height of the house were further lowered.

Gabriel Watson, a Piedmont High School Student, spoke in support of the project, stating that he empathized with the desire to have a house where the applicant's grandkids can congregate.

The Commissioners were in support of the project, stating that the new house is well designed, would be an improvement to the existing house, and is consistent with the eclectic architectural style of the neighborhood. However, the Commissioners agreed that the house, as proposed, is too high, and should be

lowered by a minimum of two feet. They also agreed that the house should be set back an additional 11 inches at the front of the property to address the neighbor's concerns. Commissioner Ode commended the applicants for presenting a proposal that does not require a variance and for committing to the reuse of building materials.

**Resolution 372-NH DR-15**

WHEREAS, the Property Owner is requesting permission to demolish the existing 1,404-square-foot, 2-bedroom, 1-bath house and construct a new two-story house with basement below. The new house is proposed to have 3,102 square feet of habitable space that includes 4 bedrooms, 4 full bathrooms, 1 half bathroom, a kitchen/family great room, dining room, living room, office, and basement 2-car garage with storage area. Proposed exterior features include windows and doors throughout, skylights, a rear deck, decorative iron work, exterior lighting, and landscape and hardscape modifications that include a new driveway, curb cut, entry path, and retaining walls in the front yard, located at 14 Lorita 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 CEQA Guidelines Section 15301, Class 1(I)(1) and 15303, Class 3(a), and the proposal conforms with the criteria and standards of Section 17.20.9(b) of the Piedmont City Code:

1. The exterior design elements are aesthetically pleasing as a whole and harmonious with existing and proposed neighborhood development. The distance between the proposed addition and adjacent residences is reasonable and appropriate due to the existing topography and neighborhood development pattern. Upper level setbacks greater than the setbacks required for the lower level have been considered and are not necessary to reduce losses of ambient and reflected light. The design works well with the topography of the site, and the placement of the garage at the lowest point reduces the required height of the retaining wall. As agreed to by the applicant, greater excavation will reduce the overall height of the house. The front façade will be offset and will include a recessed porch, which will create less volume and more interest on the front façade.
2. The proposed addition has been designed in a way that reasonably minimizes view and light impacts on neighboring properties, because the 7-foot side yard setback is more generous than the required 4-foot side yard setback. No variances are needed for this design.
3. The size and height of the addition is commensurate with the size of the lot (excluding the portions of the lot that cannot reasonably be built on), and is in keeping with the existing neighborhood development pattern, because the applicant has tried to minimize the footprint of the house and maximize the open space at the front and back of the house. The proposed floor area ratio, structure coverage, and setbacks are all in line with the neighborhood development pattern.
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. The existing or proposed on-site parking is appropriate to the size of the new additions, and additional parking is not required to prevent unreasonable short or long term parking impacts on the neighborhood, because this application proposes two new garage parking spaces under the house that face directly onto the street. The proposed parking is a great improvement over the existing parking, which is at the rear of the property and requires a long vehicular backup distance. The proposed application is in line with the neighborhood parking pattern and improves the safety for pedestrians and vehicular traffic.

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

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review application for proposed construction at 14 Lorita Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

1. **Window and Door Material.** As specified in the plans, the building material for the new windows, doors and garage door shall be wood.

2. **Window Color Scheme.** All the windows on the house shall have a consistent color scheme.

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

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

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

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. **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.

10. **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.

11. **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.

12. **Setback from Property Line Verification.** Prior to foundation inspection, the applicant shall submit to the Building Official written verification by a licensed land surveyor stating that the construction is located at the setback dimension from the north, west and south property lines as shown on the approved plans. The intent is to verify that the approved features are constructed at the approved dimension from the property lines.

13. **Building Height and Floor Level Verification.** Prior to foundation and/or frame inspection, the applicant shall provide the Building Official written verification by a licensed land surveyor stating that the floor levels and roof of the new structure are constructed at the approved heights above grade.

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

Stormwater Permit are available from the Piedmont Public Works Department and on-line at [cleanwaterprogram.org](http://cleanwaterprogram.org).

**15. Street Tree Replacement.** Due to the scope of the project and its impact on the neighborhood, and in compliance with Goal 14: Urban Forest of the City of Piedmont's General Plan to "conserve and expand Piedmont's tree canopy," the applicants shall submit the full cost of labor and materials for the installation of a new street tree, which shall be carried out by the City or its contractor(s). Accordingly and prior to the issuance of a building permit, the applicants shall submit an initial tree replacement payment in the amount of \$750, with any further payments necessary to cover costs in excess of \$750 to be submitted prior to the scheduling of a final inspection. The location, size and species of the new street tree shall be determined by the Director of Public Works or his designee.

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

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

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

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

**19. Consultant Cost Recovery.** In order to accommodate the scope and nature of the Project proposed by the Property Owner, if the Director of

Public Works deems it necessary to retain independent consultants with specialized expertise, including the City Engineer, the Property Owner shall make a cash deposit with the City at the time of the Building Permit Application in the amount of \$5,000 to be used to pay for the fees and expenses of such City consultants, or in any way otherwise required to be expended by the City for professional consultant assistance. If the cash deposit has been reduced to \$2,500 or less at any time, the Director of Public Works may require the Property Owner to deposit additional funds to cover any further estimated fees and expenses associated with consultants retained by the City on a regular basis or specifically for the Property Owner's Project. Any unexpended amounts shall be refunded to the Property Owner within 90 days after the Project has an approved Final Inspection by the Chief Building Official.

**20. City Attorney Cost Recovery.** If there is a substantial additional commitment of City Attorney's time required to accommodate the scope and nature of the Project, the Property Owner shall, at the time of the Building Permit Application, make a cash deposit with the City in the amount of \$5,000 to be used to offset time and expenses of the City Attorney relating to the Project. If such cash deposit has been reduced to \$2,500.00 or less at any time, the Director of Public Works may require the Property Owner to deposit additional funds to cover any further estimated additional City Attorney time and expenses. Any unused amounts shall be refunded to the Property Owner within 90 days after the Project has an approved Final Inspection by the Chief Building Official.

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

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

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

b. The form and amount of the Site Safety Security is subject to the approval of the Director of Public Works. Payment to City under the Site Safety Security shall be made payable upon demand by the City and prior to the issuance of the Building Permit, conditioned solely on the Director of Public Works' certification on information and belief that all or any specified part of such Performance Security is due to the City.

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

**22. 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).

**23. 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.

**24. California’s Water Efficient Landscape Ordinance:** Property Owner shall comply with the requirements of California’s Model Water Efficient Landscape Ordinance that went into effect December 1, 2015, by submitting the following required information to the Building Department:

- a. Landscape Documentation Package that includes the following 6 items:
  - i. Project Information;
  - ii. Water Efficient Landscape Worksheet;
  - iii. Soil Management Report;
  - iv. Landscape Design Plan;
  - v. Irrigation Design Plan; and
  - vi. Grading Design Plan.

The Landscape Documentation Package is subject to staff review and approval before the issuance of a building permit.

b. Once a building permit has been issued, the Property Owner shall submit a copy of the Water Efficient Landscape Worksheet, to the local water purveyor, East Bay Municipal Utility District.

c. After completion of work, the Property Owner shall submit to the City and East Bay Municipal Utility District a Certificate of Completion, including an irrigation schedule, an irrigation maintenance schedule, and an irrigation audit report . The City may approve or deny the Certificate of Completion.

A Frequently Asked Question document on the CA-WELO requirements is available at the Public Works Counter and on the City website at [www.ci.piedmont.ca.us](http://www.ci.piedmont.ca.us)).

25. **Building Height.** The overall height of the house shall be lowered by a minimum of two feet.

26. **Front Yard Setback.** The front of the house shall be set back an additional 11 inches from the front property line.

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

The Commission recessed for dinner at 7:25 p.m. and reconvened at 7:50 p.m.

**New House & Fence  
Design Review  
206 Crocker Avenue**

The Property Owner is requesting permission to demolish the existing 3,326-square-foot house, pool and other site features, and construct a new two-story house with a two-car garage within the lower level. The new house is proposed to have 1,895 square feet of habitable space that includes 2 bedrooms, 2 full bathrooms, and a kitchen/dining/living great room. Proposed exterior features include windows and doors throughout, exterior lighting, balusters, fencing, walls, and landscape and hardscape modifications that include grade alterations, a new driveway, entry path, retaining walls of various heights, wrought iron vine supports, a sculpture, a fountain, and an air conditioning unit.

Written notice was provided to neighbors. **Three affirmative response forms** were received. **Correspondence** was received from: Robert Davis, and the applicant submitted 22 forms on which the following neighbors indicated their approval of the project: Ken and Stacy Mattson, Mary Lou Martin, Daniel Levin, Marc Furstein, Andrea Clay, Ray and Deborah Gadeois, Bill and Lynne Hosler, Andrea Swenson, Lucy Anney, Kamil Pawlowski, Jeanne Kostic, Jennifer Lee Evans, Srikant Misra, Mary and John Wilson, Stephen Pratt, Neil Tuller, Wayne and Vanessa Rowland, Jacqueline Van Lang, E. Moore, Mara and Mark Lipacis, Alicia Bacon and Peter Fishel.

**Public testimony** was received from:

Dr. Katie Rodan, Property Owner of both 200 Crocker Avenue and 206 Crocker Avenue, explained that the intent of the project is to rejoin the two properties, and construct a new house for their daughter. She explained that the proposed house at 206 Crocker Avenue is in keeping with the historic Julia Morgan house at 200 Crocker Avenue, and that a large shared yard is proposed between the properties. She stated that they had made significant changes to the plans since the prior submittal and added that the project is completely code-compliant. Dr. Rodan referenced a light study that shows no impact on the house at 210 Crocker Avenue.

Stephen Sooter, Project Architect, discussed the concerns that were raised at the prior meeting by the adjacent neighbor at 210 Crocker Avenue. He outlined the changes that were made in response to these concerns, including relocating the house 10 feet to the west, lowering the new house by two feet, modifying the

proposed fence and retaining walls, and adding architectural details to the south wall of the proposed house. He also discussed the copper tile roofing material, which is proposed for both the new house and the main house at 200 Crocker Avenue, and he presented a shadow study showing that none of the direct light at 210 Crocker Avenue will be blocked by the current proposal. In response to a question from Commissioner Chase, Mr. Sooter confirmed that the southern wall of the proposed house is at the same distance from the property line as it was in the first application.

Dr. Robert Davis, neighbor at 210 Crocker Avenue, spoke in opposition to the proposal, stating that the proposed house would significantly interfere with the livability of his house. He stated that the previous application was denied because it was determined that the distance between the new house and the adjacent residence was not great enough, and that the current proposal does not address this concern. Dr. Davis indicated his appreciation for the removal of the fence along his porte cochere, but explained that the lowering of the roof does not address his concerns without also moving the wall back. Dr. Davis suggested that his concerns would be addressed if the proposed house were to be rotated 90 degrees to face Crocker Avenue.

Bobbi Feyerabend, a landscape architect and friend of Dr. Davis, spoke in opposition to the proposal. She stated that the south wall of the proposed house, with its mass and close proximity to the house at 210 Crocker Avenue, would encroach significantly on the neighbor. She commented that the proposed house is tastefully detailed and designed, but is sited inappropriately. Ms. Feyerabend suggested that the new house be rotated 90 degrees, so as to improve the view of the sky and light from 210 Crocker Avenue and double the size of the shared yard between 200 and 206 Crocker Avenue.

While the Commissioners were in favor of the design details and architectural consistency of the proposed house, they were not supportive of the siting of the house and its proximity to the neighbor at 210 Crocker Avenue. They discussed the open feeling of the neighborhood, and agreed that the proposed distance between the new house and the house at 210 Crocker Avenue is not sufficient to be in keeping with this spacious feel of the neighborhood or to mitigate the adverse ambient light and view impacts to Dr. Davis's property. The Commissioners were confident that a more harmonious design could be achieved and encouraged the applicants to move the house away from the south property line. Commissioner Chase suggested that the impact on 210 Crocker Avenue be no greater than the impact from the existing house at 206 Crocker Avenue. He also commented that by simply rotating the house 90 degrees, as suggested by the neighbor, the house would be too massive at the street. Commissioner Theophilos suggested that the house, particularly its upper level, should be moved northward a minimum of 5 feet.

#### **Resolution 377-NH DR-15**

WHEREAS, the Property Owner is requesting permission to demolish the existing 3,326-square-foot house, pool and other site features, and construct a new two-story house with a two-car garage within the lower level. The new house is proposed to have 1,895 square feet of habitable space that includes 2 bedrooms, 2 full bathrooms, and a kitchen/dining/living great room. Proposed exterior features include windows and doors throughout, exterior lighting, balusters, fencing, walls, and landscape and hardscape modifications that include grade alterations, a new driveway, entry path, retaining walls of various heights, wrought iron vine supports, a sculpture, a fountain, and an air

conditioning unit, located at 206 Crocker 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 currently proposed project does not comply with the criteria and standards of Section 17.20.9(b) of the Piedmont City Code:

1. The exterior design elements are aesthetically pleasing as a whole and harmonious with the existing and proposed neighborhood development and the applicant's current historic home at 200 Crocker Avenue. However, the distance between the addition and adjacent residences is not reasonable and is inappropriate due to the existing topography and neighborhood development pattern.
2. The proposed addition has not been designed in a way that reasonably minimizes view and light impacts on neighboring properties, because the bulk of the proposed structure, as viewed from 210 Crocker Avenue, cuts into too much of the sky.
3. The proposed structure is too bulky, as viewed from 210 Crocker Avenue, and there appear to be reasonable design alternatives with less apparent bulk.
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. The existing or proposed on-site parking is appropriate to the size of the new additions, and additional parking is not required to prevent unreasonable short and/or long term parking impacts on the neighborhood, because the proposed garage is carefully shielded from the street by a garden, is accessible, and meets the code.
5. The project complies with Design Review Guidelines I-1(a), I-1(b), I-1(c), I-1(d), I-8, I-9, I-9(a), I-10, I-11, I-12, III-1, III-3, III-4, III-5(a), III-7, III-7(a), IV-1, IV-2, IV-2(a), IV-3, IV-4, IV-5. The project does not comply with Design Review Guidelines I-2, I-2(a), I-2(b), I-2(c), I-2(d), I-5, I-7, I-7(a), III-6, III-6(a).

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission denies without prejudice the design review application for proposed construction at 206 Crocker Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City.

Moved by Chase, Seconded by Ode

Ayes: Behrens, Chase, Ode, Theophilos, Zhang

Noes: None

Recused:

Absent:

**Variance,  
Design Review &  
Fence Design Review  
38 Monte Avenue**

The Property Owner is requesting permission to expand the main house at the main and upper levels; make window and door changes; construct a two-car garage on Monte Avenue; demolish the existing garage structure in the northern corner of the lot and construct a one-story cottage. Site modifications include a 987-square-foot play court 10 feet from the Park Way property line, a new patio and spa along the eastern property line, a new patio and fire pit along the northern property line, and a new central patio with a built-in barbeque.

Modifications to fencing and retaining walls are proposed along Park Way and Monte Avenue. Variances are required in order to construct within the front (west) 20-foot setback and from Municipal Code Section 17.18.4(a) in order to pave a portion of the side yard within the 20-foot right (south) side street setback along Park Way for a purpose other than ingress and egress.

Written notice was provided to neighbors. **Two affirmative and two negative response forms** were received. **Correspondence** was received from: Lilly M. Guardia LaBar, Tara and John Boris, Joan M. Drum, Roxanne Gault, Ellen Wilson, Eric Havian and Jean Jarvis, Sandy Baker, Christiana Macfarlane, Laurie Dalton White.

**Public testimony** was received from:

Abe Friedman, homeowner, explained what measures he and his wife took since the prior hearing in March to incorporate neighbor and Commissioner feedback into their design. He noted that after consulting with three architects and studying numerous design alternatives for the garage and cottage, they made extensive changes to the proposal. He argued that the current proposal, which balances their needs with those of the neighbors and the Commission, is architecturally consistent with the existing house and the neighborhood as a whole.

Bennett Christopherson, Project Architect, outlined the changes that have been made to the proposal since the last hearing in March. He explained that the garage is now proposed to be narrower, lower, and located farther from the property line, which allows for the preservation of a street tree and an existing brick retaining wall. He presented a study showing how the garage setback is in keeping with the setbacks throughout the neighborhood. Mr. Christopherson answered Commissioners' questions and clarified aspects of the architectural plans.

Jeff George, Project Landscape Architect, explained that the current proposal significantly improves the view from the street by eliminating the existing driveway, which is in an overly paved area, and replacing it with landscaping. He added that the proposed garage, with its green roof, has been designed to be nestled into the hill, improve the feel from the street and mitigate the concerns of the neighbors.

Brian Hebert, Project Builder, assured the Commission that the construction work will be executed in a professional manner and that his work will preserve the architectural integrity of the house. He stated that he is sensitive to the issues of construction, including parking, work hours, dust and noise; and he described how the project site is situated well for proper site management. Mr. Hebert also discussed the expected construction timeline and the on-site management of water runoff.

Jennifer Friedman, homeowner, read a letter of support for the project written by her neighbors at 104 Monte Avenue, which noted that there is usually more than enough on-street parking available. Ms. Friedman also discussed the benefits of the current proposal as it relates to on-street parking.

Lilly Guardia-LaBar, neighbor at 27 Monte Avenue, spoke in opposition to the setback variance for the proposed garage. She stated that the garage would not need a variance if it were smaller and 6 feet farther from the property line, and

argued that there is no hardship to keep the applicants from amending the proposed garage to meet the setback requirement. Ms. Guardia-LaBar also discussed an error in the scale of the architectural plans.

The Commissioners were unanimously in support of the project. Commissioner Chase noted that errors in drawing scale is normally verified and corrected during the review of plans submitted for a building permit. The Commissioners commended the applicants for successfully incorporating feedback from neighbors and Commissioners in their well thought-out design. They noted many improvements in the proposal, including the removal of the driveway on Park Way and the addition of an on-street parking space; additional landscaping and the preservation of street trees; the integration of the garage into the landscape with a green roof; and positive changes to the rear cottage. Commissioners Zhang and Theophilos noted that the new garage will be more convenient for the homeowners and more likely to be used. Commissioner Theophilos added that there is precedent throughout the neighborhood for the proposed location of the garage.

**Resolution 378-V/DR-15**

WHEREAS, the Property Owner is requesting permission to expand the main house at the main and upper levels; make window and door changes; construct a two-car garage on Monte Avenue; demolish the existing garage structure in the northern corner of the lot and construct a one-story cottage. Site modifications include a 987-square-foot play court 10 feet from the Park Way property line, a new patio and spa along the eastern property line, a new patio and fire pit along the northern property line, and a new central patio with a built-in barbeque. Modifications to fencing and retaining walls are proposed along Park Way and Monte Avenue. All improvements are located at 38 Monte Avenue, Piedmont, California, which construction requires design review; and

WHEREAS, variances from the requirements of Chapter 17 of the Piedmont City Code are necessary to construct within the front (west) 20-foot setback and, pursuant to Municipal Code Section 17.18.4(a), to pave a portion of the side yard within the 20-foot right (south) side street setback along Park Way for a purpose other than ingress and egress; 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 CEQA Guidelines 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 unique topography of the site, which is level at Monte Avenue and slopes up along Park Way. A relocated garage on Monte Avenue is safer, more convenient, and more usable, and will make on-street parking available for others. Additionally, paving a portion of the side yard for the sport court is a reasonable request, due to the unusual circumstance of a corner lot. 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, in that there are other properties in the neighborhood with the same parking arrangement.

2. The variance is compatible with the immediately surrounding neighborhood and the public welfare, because the new garage will be tucked beneath the existing house and landscape, and it will maintain the character of the house and landscape. The proposed planters and retaining walls will reduce the mass and scale of the garage and reduce the impact to neighbors. Despite the location of the sport court in the 20-foot setback, the proposal actually provides more landscaping along Park Way and reduces the non-conformity.

3. Accomplishing the improvements without variance would cause unreasonable hardship in planning, design, or construction, because, due to the topography of the site, the garage is more usable in the proposed location.

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

1. The exterior design elements are aesthetically pleasing as a whole and harmonious with existing and proposed neighborhood development. The distance between the addition and adjacent residences is reasonable and appropriate due to the existing topography and neighborhood development pattern. Upper level setbacks greater than the setbacks required for the lower level have been considered and are not necessary to reduce losses of ambient and reflected light. The garage is well designed and tucked beneath the existing house and landscape. The height of the rear cottage is at a minimum. The proposed additions are well integrated to maintain and enhance the integrity of the house. The fence is well designed to go with the style of the house, and the height of the fence is commensurate with the existing property.

2. The proposed addition has been designed in a way that reasonably minimizes view and light impacts on neighboring properties. The garage will be tucked beneath the existing house and landscape, with little bulk and mass and no impact on the neighbors' views and privacy.

3. The size and height of the addition is commensurate with the size of the lot (excluding the portions of the lot that cannot reasonably be built on), and is in keeping with the existing neighborhood development pattern, because the proposed footprint of the cottage is minimal and the garage is well integrated into the landscape design.

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. The existing or proposed on-site parking is appropriate to the size of the new additions, and additional parking is not required to prevent unreasonable short and/or long term parking impacts on the neighborhood. The proposed two-car garage will replace two existing garages. One existing curb cut will be removed, which will allow for more on-street parking. The proposed circulation pattern and parking layout are safer and more convenient, and they have no impact on pedestrian safety.

5. 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), V-1, V-2, V-3, V-4, V-5, 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 proposed construction at 38 Monte 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. 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. Window and Door Material.** As specified in the plans, the building material for the new windows and doors shall be wood.

**4. Window Color Scheme.** All the windows on the house shall have a consistent color scheme.

**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. Setback from Property Line Verification.** Prior to foundation inspection, the applicant shall submit to the Building Official written verification by a licensed land surveyor stating that the construction is located at the setback dimension from the north, east, and west property lines as shown on the approved plans. The intent is to verify that the approved features are constructed at the approved dimension from the property line(s).

**7. 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.

**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.

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.

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

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

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

**12. 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.

**13. City Attorney Cost Recovery.** If there is a substantial additional commitment of City Attorney's time required to accommodate the scope and nature of the Project, the Property Owner shall, at the time of the Building Permit Application, make a cash deposit with the City in the amount of \$5,000 to be used to offset time and expenses of the City Attorney relating to the Project. If such cash deposit has been reduced to \$2,500.00 or less at any time, the Director of Public Works may require the Property Owner to deposit additional funds to cover any further estimated additional City Attorney time and expenses. Any unused amounts shall be refunded to the Property Owner within 90 days after the Project has an approved Final Inspection by the Chief Building Official.

**14. 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).

**15. 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.

**16. 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.

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

**18. Approved Plan Set.** The approved plans are those submitted on December 10, 2015 after notices to neighbors were mailed and the application was available for public review.

Moved by Zhang, Seconded by Ode  
Ayes: Behrens, Chase, Ode, Theophilos, Zhang

Noes: None  
Recused:  
Absent:

**Variance and  
Design Review  
951 Kingston Avenue**

The Property Owner is requesting permission to construct a 694-square-foot upper-level addition; make window and door modifications; make interior improvements; and seek retroactive approval for railing modifications and various secondary structures in the rear yard including a play structure, planters, bee hive, and chicken coop. A variance is required in order to add an additional room eligible for use as a bedroom without supplying conforming parking.

Written notice was provided to neighbors. **Three affirmative response forms** were received. **Correspondence** was received from: Greg and Lynda Ong.

**Public testimony** was received from:

Rob Kelly, Project Architect, summarized the objections that were raised at the last Commission hearing. He explained what changes were made to the project to address these concerns, including greatly reducing the size and bulk of the project and working mostly within the attic space of the existing house. He stated that all neighbors are currently in support of the new proposal. With regard to the parking variance, Mr. Kelly presented a study showing that only one house on the street meets the City's parking requirements, and that the proposal is consistent with the other houses in the neighborhood. He added that there is no appropriate place on the site for an additional off-street parking space, and that a front facing two-car garage would destroy the façade and eliminate on-street parking.

Brett Hondorp, homeowner, discussed other design alternatives that were considered for an expansion of his home. He indicated that expanding into the basement would require substantial excavation, and expanding into the backyard would undermine the character of the backyard. He explained that, although a second story addition is ideal for his family, the neighbor opposed it due to a loss of light. He reported that since the prior hearing, they have downsized the project and received full support from their neighbors. Mr. Hondorp added that the small second-story addition will not be readily visible from the street and that the two existing tandem parking spaces provide more parking than is typical in the neighborhood. In response to a question from Commissioner Chase, Mr. Hondorp confirmed that the application proposes to make the existing garage more usable.

The Commission was unanimous in its support of the project. They commended the applicants for working with their neighbors and improving the design. Commissioner Chase also expressed support for the parking variance, given that the garage is being improved upon to make it more usable.

**Resolution 379-V/DR-15**

WHEREAS, the Property Owner is requesting permission to construct a 694-square-foot upper-level addition; make window and door modifications; make interior improvements; and seek retroactive approval for railing modifications and various secondary structures in the rear yard including a play structure, planters, bee hive, and chicken coop, located at 951 Kingston 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 because to add an additional room eligible for use as a bedroom 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 CEQA Guidelines 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, in that the topography makes it very difficult to expand the garage, and a garage expansion at the front of the house would be detrimental to the façade. 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, based on a new study provided by the applicant for the current application regarding the number of bedrooms and parking spaces on properties throughout the neighborhood, the proposal is consistent with the neighborhood and is more conforming than many other properties in the neighborhood.
3. Accomplishing the improvements without variance would cause unreasonable hardship in planning, design, or construction due to the topography and the difficulty of locating a garage anywhere else on the property.

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

1. The exterior design elements are aesthetically pleasing as a whole and harmonious with existing and proposed neighborhood development. The distance between the addition and adjacent residences is reasonable and appropriate due to the existing topography and neighborhood development pattern. Upper level setbacks greater than the setbacks required for the lower level have been considered and were incorporated into the design to reduce losses of ambient and reflected light. The current proposal includes a smaller addition that has been shifted to reduce the impact on neighbors.
2. The proposed addition has been designed in a way that reasonably minimizes view and light impacts on neighboring properties, because the proposed redesign has eliminated view and light impacts on neighboring properties.
3. The size and height of the addition is commensurate with the size of the lot (excluding the portions of the lot that cannot reasonably be built on), and is in keeping with the existing neighborhood development pattern, because the house with the proposed addition is consistent with other houses in the neighborhood and is not any bulkier or larger than 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. The existing or proposed on-site parking is appropriate to the size of the new addition, and additional parking is not required to prevent unreasonable short and/or long term parking impacts on the neighborhood, because the proposal is consistent with houses throughout the neighborhood, which have managed without complete compliance with the parking regulations.

5. 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 variance and design review application for proposed construction at 951 Kingston 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. **Setback from Property Line Verification.** Prior to frame inspection, the applicant shall submit to the Building Official written verification by a licensed land surveyor stating that the construction is located at the setback dimension from the east (right side) and west (left side) property lines as shown on the approved plans. The intent is to verify that the approved features are constructed at the approved dimension from the property lines.

4. **Building Height and Floor Level Verification.** Prior to frame inspection, the applicant shall provide the Building Official written verification by a licensed land surveyor stating that the floor level and roof of the new structure are constructed at the approved height above grade.

5. **Windows.** The color scheme of the new windows shall be consistent throughout the house.

6. **Window and Door Material.** As specified in the plans, the building material for the new windows and doors shall be metal clad.

7. **Skylights.** The flashings of the new skylights shall be painted to match the color of the adjacent roof.

8. **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.

**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.

**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.

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

**ADJOURNMENT**

There being no further business, Chairman Theophilos adjourned the meeting at 9:30 p.m.