

PIEDMONT PLANNING COMMISSION

Regular Meeting Minutes for Monday, June 9, 2014

A Regular Session of the Piedmont Planning Commission was held June 9, 2014, 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 May 23, 2014.

CALL TO ORDER

Chairman Ode called the meeting to order at 5:05 p.m. She announced that at tonight's extended dinner break in the Conference Room, the Commission will discuss with the Acting City Attorney legal procedures and findings criteria related to variance consideration. The public is invited to attend.

ROLL CALL

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

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

City Council Liaison: Councilmember Tim Rood

CONSENT CALENDAR

By procedural motion, the Commission placed the following applications on the Consent Calendar:

- 137 Greenbank Avenue (Design Review)
- 120 Caperton Avenue (Fence Design Review)
- 40 Woodland Way (Design Review)
- 57 Crest Road (Fence Design Review)

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

Design Review 137 Greenbank Avenue

Resolution 81-DR-14

WHEREAS, the Property Owner is requesting permission to construct a new 3-car garage with 698 sq. ft. of habitable space and deck above in the northern corner of the property located at 137 Greenbank Avenue, Piedmont, California, which construction requires design review; and

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

1. The exterior design elements are aesthetically pleasing as a whole and harmonious with existing and proposed neighborhood development. The distance between the proposed upper level addition and adjacent residences is reasonable given the size of the lot and appropriate due to the existing very steep topography and neighborhood development pattern. There are upper level setbacks greater than the setbacks for the lower level because of the proposed deck. The deck is harmonious with the overall aesthetic development of the original house and the new construction.

2. The proposed new multi-level structure has been designed in a way that reasonably minimizes view and light impacts on neighboring properties (as defined in Section 17.2.70) because the proposed construction is sited at the top of the lot, away from adjacent 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. The property is a very large lot and the project does not impact the property's structure coverage ratio.
4. The safety of residents, pedestrians, and vehicle occupants and the free flow of vehicular traffic are not adversely affected, considering the circulation pattern, parking layout and points of ingress and egress because the property is a "key-hole" lot where ingress/egress is uphill through a long driveway. Any construction on the main body of the lot will not have an impact on the existing ingress/egress situation with regard to parking.
5. The project complies with Design Review Guidelines I-1, I-1(a) through (d), I-2, I-2(a) through (d), I-3, I-4, I-5, I-5(a) & (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 and III-7(a).

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review application for construction at 137 Greenbank Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

1. **Approved Plan Set.** The approved plans are those submitted on May 16, 2014 with revisions submitted May 28, 2014, after notices to neighbors were mailed and the application was available for public review.
2. **C&D Compliance.** Compliance with Chapter 9 Article III of the Municipal Code, which governs the recycling of construction and demolition debris, is required for all phases of this project.
3. **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.
4. **Defense of Legal Challenges.** If there is a third party administrative, legal or equitable action challenging the project approvals, including CEQA

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

5. **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.

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

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

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

8. **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.

9. **City Facilities Security.** The Property Owner shall provide a specific cash deposit, letter of credit, bank guarantee, or other similar financial vehicle ("City Facilities Security") in the amount of \$10,000 as established by the Director of Public Works. This financial vehicle serves as an initial sum to cover the cost of any potential damage to City property or facilities in any way caused by Property Owner, Property Owner's contractors or subcontractors, or any of their agents, employees or assigns, and related in any way to the Project. The

Property Owner is responsible for the full cost of repair as determined by the City Engineer prior to final inspections. The form and terms of such City Facilities Security shall be determined by the Director of Public Works after consultation with the Property Owner. The Director may take into account any of the following factors: the cost of construction; past experience and costs; the amount of excavation; the number of truck trips; the physical size of the proposed project; the logistics of construction; the geotechnical circumstances at the site; and City right-of-way and repaving costs.

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

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

10. 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.

11. 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.

12. **Roof Color.** The proposed flat roof shall be a non-reflective medium or dark color to minimize the visual impact on upslope properties.

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

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.

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. **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.

17. **Egress Window.** At least one window in the proposed bedroom must meet egress requirements. If minor modifications are required to comply, they shall be subject to staff review.

18. **Exterior Lights.** Exterior lights are required at each new exterior door. They shall be downward directed with an opaque shield.

19. **Building Section.** A building section showing the extent of excavation and relationship to neighboring properties shall be provided as part of the Building Permit drawing set.

20. **Deck/Fire Protection.** The proposed cantilevered deck shall comply with the fire protection requirements of the Building Code.

21. **Fire Sprinkler.** Fire sprinklers are required for the new unit.

22. **Roof Water Runoff.** Water runoff will not be permitted to drain onto neighboring properties. If design modifications are required to address this requirement, they shall be subject to staff review.

RESOLVED FURTHER, that the approval of the Planning Commission/City Council and any conditions of that approval shall not extend to any particulars

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

Moved by Chase, Seconded by Simpson

Ayes: Chase, Ode, Simpson, Theophilos, Zhang

Noes: None

Absent: None

**Fence Design Review
120 Caperton Avenue**

Resolution 138-DR-14

WHEREAS, the Property Owner is requesting permission to replace an existing metal gate at the front of the house with an approximately 7 ft. 5 in. high decorative metal gate located at 120 Caperton Avenue, Piedmont, California, which construction requires design review; and

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

1. The exterior design elements of the entry gate are aesthetically pleasing as a whole and harmonious with existing and proposed neighborhood development. The new painted iron gate replaces an existing painted iron gate in the same location. The stucco walls at the gate will remain and the total width of the gate remains unchanged. The new gate replaces two narrow leaves of the existing gate with a wider single gate, with side panels, providing a more generous entry that is more aesthetically compatible with 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 is no impact.
3. The safety of residents, pedestrians, and vehicle occupants and the free flow of vehicular traffic are not adversely affected, considering the circulation pattern, parking layout and points of ingress and egress because there is no change in existing circulation patterns.
4. The project complies with Design Review Guidelines V-1, V-2, V-3, V-4, V-5, V-5(a) through (c).

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review application for construction at 120 Caperton Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following condition:

- **Defense of Legal Challenges.** If there is a third party administrative, legal or equitable action challenging the project approvals, including

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

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

Moved by Simpson, Seconded by Chase

Ayes: Chase, Ode, Simpson, Theophilos, Zhang

Noes: None

Absent: None

**Design Review
40 Woodland Way**

Resolution 141-DR-14

WHEREAS, the Property Owner is requesting permission to modify the exterior of the residence, including changes to windows, doors and skylights; demolition of the existing rear patio cover and two chimneys; and new exterior lighting. The application also proposes site improvements in the rear yard, including the installation of a new pool located at 40 Woodland 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 subject property, the Piedmont Planning Commission finds that the project is categorically exempt under the California Environmental Quality Act, pursuant to Section 15301, Class 1(e) and the proposal conforms with the criteria and standards of Section 17.20.9 of the Piedmont City Code:

1. The exterior design elements are aesthetically pleasing as a whole and harmonious with existing and proposed neighborhood development. There is no change in exterior height, bulk, roof pitch or materials. New pool equipment is located within the basement to mitigate noise and visual impact. The project also involves the demolition of some existing structure to reduce the building mass.
2. The design is appropriate, considering its effect on neighboring properties' existing views, privacy and access to direct and indirect light because all exterior lighting will be fully shielded, the construction is in the rear yard, the improvements are not visible from the street and neighboring property is at a higher elevation.
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 change in existing circulation patterns.

4. The project complies with Design Review Guidelines II-1, II-2, II-3(a) through (d), II-7 and II-7(a).

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review application for construction at 40 Woodland 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 May 9, 2014 with additional materials submitted on May 28, 2014, after notices to neighbors were mailed and the application was available for public review.

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

3. **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.

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

5. **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.

6. **Property Line Location.** At the sole discretion of the Chief Building Official, a licensed land surveyor shall be required by the Building Department to verify and mark the location of the southern property lines at the time of shoring and foundation inspection for the installation of the pool to verify the approved setback dimension measured to the new construction.

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

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.

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

9. **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.

10. **City Facilities Security.** The Property Owner shall provide a specific cash deposit, letter of credit, bank guarantee, or other similar financial vehicle ("City Facilities Security") in the amount of \$10,000 as established by the Director of Public Works. This financial vehicle serves as an initial sum to cover the cost of any potential damage to City property or facilities in any way caused by Property Owner, Property Owner's contractors or subcontractors, or any of their agents, employees or assigns, and related in any way to the Project. The Property Owner is responsible for the full cost of repair as determined by the City Engineer prior to final inspections. The form and terms of such City Facilities Security shall be determined by the Director of Public Works after consultation with the Property Owner. The Director may take into account any of the following factors: the cost of construction; past experience and costs; the amount of excavation; the number of truck trips; the physical size of the proposed project; the logistics of construction; the geotechnical circumstances at the site; and City right-of-way and repaving costs.

a. To provide clear baseline information to assist in determining whether damage to the City's facilities has been caused by the Property Owner or others working for or on behalf of Property Owner, the City will document such

facilities (including, without limitation, streets and facilities along the approved construction route as specified in the Construction Management Plan, to establish the baseline condition of the streets and facilities. The City shall further re-document the streets as deemed appropriate after the Project commences until the Director of Public Works determines that further documentation is no longer warranted. As part of the documentation, the City may water down the streets to better emphasize any cracks or damage in the surface. The Property Owner is responsible for the full cost of the documentation and repair work as determined by the City Engineer, and shall reimburse the City for those costs prior to the scheduling of final inspection.

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

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

12. 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.

13. 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.

14. **Exterior Lights.** Exterior lights are required at each new exterior door. They shall be downward directed with an opaque shield.

15. **Skylight.** The openable skylight shall be 10 feet horizontally or 3 feet vertically from plumbing vents. Revisions necessary to comply shall be subject to staff review.

16. **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.

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

Moved by Zhang, Seconded by Chase

Ayes: Chase, Ode, Simpson, Theophilos, Zhang

Noes: None

Absent: None

**Fence Design Review
57 Crest Road**

Resolution 144-DR-14

WHEREAS, the Property Owner is requesting permission to install an approximately 11 ft. high iron gate at the front of the driveway located at 57 Crest Road, Piedmont, California, which construction requires design review; and

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

1. The exterior design elements are aesthetically pleasing as a whole and harmonious with existing and proposed neighborhood development in that the proposed gate matches the architectural elements of the home's windows.
2. The design is appropriate, considering its effect on neighboring properties' existing views, privacy and access to direct and indirect light because there is no impact.
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 gate swings in so there is no obstruction of traffic sight lines or pedestrian flow.
4. The project complies with Design Review Guidelines V-1, V-2, V-3 and V-5(a) through (c).

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

construction at 57 Crest Road, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following condition:

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

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

Moved by Theophilos, Seconded by Chase

Ayes: Chase, Ode, Simpson, Theophilos, Zhang

Noes: None

Absent: None

PUBLIC FORUM

Dimitri Magganas referenced a book by Benjamin Barber *If Mayors Ruled the World* in voicing support for greater accountability to taxpayers and more "user friendly" municipal governments.

APPROVAL OF MINUTES

Resolution 13-PL-14

RESOLVED, that the Planning Commission approves as submitted its meeting minutes of May 12, 2014.

Moved by

Ayes: Chase, Ode, Simpson, Theophilos, Zhang

Noes: None

Absent: None

REGULAR CALENDAR

The Commission considered the following items of regular business:

Variance, Design Review & Second Unit Permit with Parking Exception 63 Wildwood Avenue

The Property Owner is requesting variance, design review and second unit permit to convert existing basement storage space to a 613 sq. ft., 2-bedroom second unit in the lower level of the residence. A new window and modification to two lower level windows and two doors are proposed. Two feet of lattice are proposed on top of the existing 6 ft. high fence for 20 ft. along the western property line. The requested variance under Section 17.40.6e is because the main residence does not have conforming parking. A parking exception is requested pursuant to Section 17.40.7 (c) (ii) for a second unit without on-site parking.

Written notice was proved to neighbors. **Three affirmative, eight negative response forms** were received. **Correspondence** was received from: Doug

Korpi & Theresa Hanna; Arthur & Debra Bakal; Petition Against the Application; Lisa Bagnatori & Andy Ross; Panagoula Stavropoulos; Lu Lynn de Silva; Gary Theut & Jennifer Colton; Dean & Carol Miller; Rick Schiller; Emily Flynn & Matt O'Connell

Public testimony was received from:

Helen Sandoval described her efforts to discuss the project with neighbors and her belief that neighborhood objection is based on opposition to the creation of a low-income second unit in the neighborhood. She explained that the proposed second unit is fully contained within the existing building envelope of the home, is located close to public transportation and will impose no negative impacts on neighbors. In reference to neighbor concerns over parking congestion, she submitted photographs in support of her contention that there is ample on-street parking to accommodate the second unit.

Steve Shirley, Project Architect, concurred with Ms. Sandoval's comments regarding the availability of on-street parking and noted that the privacy concerns of 57 Wildwood will be mitigated through the addition of a 2 ft. lattice screen atop the fence bordering the two properties.

Debbie & Art Bakal cited a neighborhood petition signed by 17 residents in opposition to the proposal in noting that neighborhood parking congestion is the main basis for the opposition, especially in light of a new pre-school scheduled to open soon at the Grand Avenue end of the street. They felt that a 6 bedroom house with only 1 off-street parking space would negatively impact the neighborhood in terms of parking congestion. In addition, they stressed that because of the close proximity of the two homes, noise and privacy intrusion is already a reality and the addition of a proposed second unit adjacent to their breakfast/kitchen area will worsen this situation. They also felt that the proposed 2 ft. of lattice atop a 6 ft. high fence will block their light and create a "pinned in" feeling. Mr. Bakal also voiced his distress that their opposition to the project has been characterized as being racist in motivation.

Dean Miller concurred with the Bakal's objection, citing concern that in the future the property could be converted into a 6 bedroom duplex, with the potential of 12 occupants. He explained that although severe parking congestion has been a problem in the neighborhood for years, the neighborhood has resisted the creation of a residential parking district because the number and placement of necessary street signage would significantly detract from the neighborhood's residential quality and ambience.

Seth Feinberg, Attorney representing the Bakal's cited the City Code in support of his contention that variance approval in this case is not justified and that the application fails to meet Piedmont's legal standards for the granting of variance.

Gary Theut also opposed the project, citing privacy loss and parking congestion concerns.

The Commission opposed project approval, citing the following reasons: (i) the availability of several options for providing conforming parking on the property, such as duplicating the "Moraga Avenue solution" by creating a drive through entrance through the current garage door and crawl space to a new garage located in the rear yard or providing driveway access through the side yard to a

rear yard garage; (ii) the high density impact of creating a 2 bedroom second unit in such close proximity to neighboring property in terms of privacy, light and view intrusiveness; (iii) concern that increasing on-street parking congestion (especially around the traffic median) could impede emergency vehicle access as well as obstruct pedestrian/traffic sight lines at this 3-street intersection; and (iv) the absence of any unusual physical circumstance on the property to justify the granting of variance. By procedural motion, Ms. Sandoval was invited back to respond to the proposed rear garage solution. Ms. Sandoval felt that the Bakal's would be adamantly opposed to the creation of a driveway along the side yard and that a City-owned heritage oak tree may impede an expanded driveway option.

Resolution 86-V/DR/SU-14

WHEREAS, the Property Owner is requesting permission to convert existing basement storage space to a 613 sq. ft., 2-bedroom second unit in the lower level of the residence. A new window and modification to two lower level windows and two doors are proposed. Two feet of lattice are proposed on top of the existing 6 ft. high fence for 20 ft. along the western property line located at 63 Wildwood Avenue, Piedmont, California, which construction requires variance, design review and second unit permit with parking exception; and

WHEREAS, a variance from the requirements of Chapter 17 of the Piedmont City Code is necessary in order to permit a second unit without providing on-site 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 subject property, the Piedmont Planning Commission finds that:

1. The project is categorically exempt under the California Environmental Quality Act, pursuant to Section 15301, Class 1(e).
2. The underlying lot and existing improvements do not present unusual physical circumstances because of which strictly applying the terms of this chapter would keep the property from being used in the same manner as other properties in the zone which conform to the zoning requirements. Opportunities exist for providing conforming on-site parking, e.g., the rear yard is large enough to accommodate the construction of a garage and options exist for ingress/egress to this new garage either through a side yard driveway or a "drive through" the current garage and crawl space to the rear yard.
3. The variance is not compatible with the immediately surrounding neighborhood and the public welfare because the absence of on-site parking negatively impacts the neighborhood.
4. Accomplishing the improvement without variance would not cause unreasonable hardship in planning, design, or construction because opportunities exist for providing conforming parking.
5. The proposal does not conform with the criteria and standards of Section 17.20.9 of the Piedmont City Code.
6. While there is no significant change in the existing exterior of the home, the proposal is not harmonious with existing and proposed neighborhood

development because the proposed entrance to the new second unit is in direct line of sight of a neighboring homeowner.

7. The design is not appropriate, considering its effect on neighboring properties' existing views, privacy and access to direct and indirect light because the primary bulk of the new second unit is oriented toward the side yard, adversely affecting the side yard neighbor.

8. The safety of residents, pedestrians, and vehicle occupants and the free flow of vehicular traffic could be adversely affected if no on-site parking is provided.

9. The project fails to comply with Design Review Guidelines II-1, II-2, II-7, V-1, V-2, V-3, V-5, V-5(a) through (c) and V-6.

10. the proposal does not conform with the criteria and standards of Section 17.40.7.c.ii of the Piedmont City Code in that the parking exception (i) will negatively impact parking congestion within the neighborhood; (ii) potentially create safety hazards by impeding emergency vehicle access and obstructing pedestrian sight lines around the traffic median at this 3-street intersection; and (iii) is not necessary because constructing conforming on-site parking in the rear yard is a viable option for the applicants.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission denies, without prejudice, the variance, design review and second unit permit with parking exception application for proposed construction at 63 Wildwood Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City

Moved by Simpson, Seconded by Chase

Ayes: Chase, Ode, Simpson, Theophilos, Zhang

Noes: None

Absent: None

**Variance and
Design Review
302 Magnolia Avenue**

The Property Owner is requesting variance and design review to demolish the existing garage; construct a new 1-car carport, patio counter, fountain and deck with hot tub in the rear yard; add exterior lighting; make various changes to the interior, including the addition of 2 bedrooms and full bathroom within the basement level; and make various landscape and hardscape improvements, including a new driveway surface and new fence along the south property line. The requested variances are from: (1) Section 17.10.4 to allow a structure coverage of 50.3% in lieu of the code permitted maximum of 40%; (2) Section 17.10.7 to allow the proposed carport to extend to the right (south) property line and the hot tub deck structure to extend to within 4 inches of the right (south) property line in lieu of the code required minimum of a 4 ft. side yard setback; (3) Section 17.10.7 to allow the new carport to extend to the left (north) side property line in lieu of the code required minimum of a 4 ft. side yard setback; and (4) Section 17.16 to allow the addition of two rooms eligible for use as bedrooms to a home with one covered parking space measuring 8'4" by 17'5" in lieu of the code required minimum of two non-tandem parking spaces, each measuring 9 ft. by 20 ft.

Written notice was provided to neighbors. **Three affirmative response forms** were received. **Correspondence** was received from: Frances & Paula Geiger

Public testimony was received from:

Wendi Sue displayed a rendering of the property's existing and proposed layout, stressing that it is physically impossible to construct a 2-car garage on the property because of its steep slope and irregular configuration. She noted that approximately 70% of homes in the neighborhood have non-conforming parking. She explained that the carport is extended to the side property lines at the request of neighbors as a means of avoiding the creation of small, inaccessible and unmaintained "no man's lands" between the properties. The solid sides of the carport facing adjacent properties will be unpainted cedar or redwood to minimize future maintenance requirements. Drainage will be directed away from neighboring properties.

The Commission supported application approval, agreeing that the property's steep slope, triangular configuration and small rear yard precludes the construction of a 2-car garage on the property. However, the proposed carport will provide 1-off street parking space for the property that is attractively designed to enhance architectural interest while reducing visual mass.

Resolution 122-V/DR-14

WHEREAS, the Property Owner is requesting permission to demolish the existing garage; construct a new 1-car carport, patio counter, fountain and deck with hot tub in the rear yard; add exterior lighting; make various changes to the interior, including the addition of 2 bedrooms and full bathroom within the basement level; and make various landscape and hardscape improvements, including a new driveway surface and new fence along the south property line located at 302 Magnolia Avenue, Piedmont, California, which construction requires variance and design review; and

WHEREAS, variances from the requirements of Chapter 17 of the Piedmont City Code are necessary in order to: (i) construct within the 4 ft. left (north) side yard setback and the 4 ft. right (south) side yard setback; (ii) further exceed the 40% structure coverage limit; and (iii) add a 3rd and 4th 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 subject property, the Piedmont Planning Commission finds that:

1. The project is categorically exempt under the California Environmental Quality Act, pursuant to Section 15301, Class 1(e).
2. The underlying lot and existing improvements present unusual physical circumstances, including but not limited to small size of this pie-shaped lot. Without side yard variances, there would be no usable rear yard. In addition, without the setback variances, an undesirable and inaccessible "no man's land" behind the garage would be created to the detriment of the applicants and their neighbors. Because of these circumstances, strictly applying the terms of this chapter would keep the property from being used in the same manner as other properties in the zone which conform to the zoning requirements.
3. The variances are compatible with the immediately surrounding neighborhood and the public welfare because the majority homes in the neighborhood do not have conforming parking. In addition, adjacent neighbors

support the setback variances to avoid the creation of an unmaintained "no man's land."

4. Accomplishing the improvement without variance would cause unreasonable hardship in planning, design, or construction because the project could not be built.

5. The proposal conforms with the criteria and standards of Section 17.20.9 of the Piedmont City Code.

6. The exterior design elements are aesthetically pleasing as a whole and harmonious with existing and proposed neighborhood development. There is no exterior changes to the house and the proposed design of the carport is attractive and architecturally compatible with the home.

7. The design is appropriate, considering its effect on neighboring properties' existing views, privacy and access to direct and indirect light because the proposed carport replaces a parking structure that is no longer usable.

8. The safety of residents, pedestrians, and vehicle occupants and the free flow of vehicular traffic are not adversely affected, considering the circulation pattern, parking layout and points of ingress and egress. The proposal adds a conforming on-site parking space to a property which currently has no usable off-street parking.

9. The project complies with Design Review Guidelines II-1, II-2, II-3, II-3(a) through (d), II-4, II-5, II-5(a), II-6, II-6(a) & (b), 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), V-1, V-2, V-5 and V-7.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the variance and design review application for construction at 302 Magnolia Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

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

2. **Roof Color.** The roof for the proposed new carport, including any exposed waterproof membrane, shall be a non-reflective medium or dark color to minimize the visual impact on upslope properties.

3. **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.

4. **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.

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

7. **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.

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.

b. Neighboring Property Owner Permission. Should the execution of the Foundation/Shoring/Excavation Plan require excavation into a neighboring property or if access onto the neighboring property is necessary for construction for the carport, fencing or any other features, the applicant shall submit, prior to the issuance of Building Permit, a written

statement from the neighboring property owner granting permission for access onto his/her property for the purpose of excavation and/or construction.

c. Neighboring Property Owner Permission. Project construction shall not commence until an agreement is reached with the neighbor at 306 Magnolia Avenue regarding how the neighbor's dogs will be contained within her yard during construction.

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.

RESOLVED FURTHER, that the approval of the Planning Commission/City Council and any conditions of that approval shall not extend to any particulars set forth in the documents submitted for the project which are inconsistent with or in violation of any applicable law, including but not limited to Chapters 5 and 17 of the City Code, nor does the approval extend to matters not set forth, or inadequately represented, in submitted documents (whether or not consistent

with applicable law). The City reserves the right to require compliance with applicable laws and to attach conditions after initial approval is given, if noncompliance is discovered or additional conditions are considered necessary and appropriate in light of Commission/Council findings.

Moved by Simpson, Seconded by Chase

Ayes: Chase, Ode, Simpson, Theophilos, Zhang

Noes: None

Absent: None

**Design Review
331 Hillside Avenue**

The Property Owner is requesting design review to construct an approximate 569 sq. ft. guest house with a covered porch; new exterior ceiling fan and lighting; and metal handrails at the new on-grade stairs leading from the existing driveway to the guesthouse.

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

Alternate Commissioner Behrens recused himself from discussion on this application and left the chambers.

Public testimony was received from:

Robert Williamson stated that in response to neighbor requests, the roof line of the guest house has been lowered, the structure reoriented on the property and the deck pulled back and a privacy screen added to mitigate potential privacy/view impacts. He also assured the Commission that both the guest house construction and the completion of his on-going major renovation of the main house will be completed by the end of the year. He stated that the guest house proposal grew out of a planning staff suggestion that a former caretaker cottage be converted to a guest house to help meet the City's regional housing needs assessment.

Amy Nunes, Project Architect, described the architectural features of the guest cottage, noting that it is sited below street level and will be screened by landscaping.

Ari Steinberg, speaking on behalf of George Zimmer, voiced support for project approval.

The Commission supported application approval, agreeing that the proposed guest house is a charming, well-balanced addition to the property, incorporates architectural detailing found on the main house and, as a second unit, helps the City meet its regional housing requirements. However, given the prolonged nature of the on-going renovation of the main house, the Commission urged the applicant to insure that construction activity complies with City regulations.

Resolution 135-DR-14

WHEREAS, the Property Owner is requesting permission to construct an approximate 569 sq. ft. guest house with a covered porch; new exterior ceiling fan and lighting; and metal handrails at the new on-grade stairs leading from the existing driveway to the guesthouse located at 331 Hillside Avenue, Piedmont, California, which construction requires design review; and

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

1. The exterior design elements are aesthetically pleasing as a whole and harmonious with existing and proposed neighborhood development in that the guest house has been architecturally integrated with the main house.
2. The design is appropriate, considering its effect on neighboring properties' existing views, privacy and access to direct and indirect light because there is no impact. The applicant specifically revised the design of the guest house to lower the roof line, shift the location of the structure on the property, reduce the size of the deck and include a deck privacy screen to mitigate any potential adverse impact on adjacent neighbors.
3. The safety of residents, pedestrians, and vehicle occupants and the free flow of vehicular traffic are not adversely affected, considering the circulation pattern, parking layout and points of ingress and egress because there will be no need for on-street parking since the property includes an oversized 4-car garage.
4. The project complies with Design Review Guidelines I-1, I-1(a) through (d), I-2, I-2(a) through (d), I-3, I-4, I-5, I-5(a) & (b), I-6, I-7, I-7(a), I-8, I-9, I-9(a), I-10, I-11 and I-12.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review application for construction at 331 Hillside Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

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

a. Construction Site Control of Stormwater. The California Regional Water Quality Control Board requires all projects that disturb the site to comply with Provision C.6 of the San Francisco Bay Regional Stormwater NPDES Permit in order to prevent construction site discharges of pollutants and other regulated materials during construction. As required by the Chief Building Official and prior to the issuance of a building permit, the Applicant shall develop and submit a construction stormwater management plan as part of the Construction Management Plan to achieve timely and effective compliance with Provision C.6. Permit Provision C.6.c.ii provides sources for site specific, and seasonally- and phase-appropriate,

effective Best Management Practices (BMPs) that may be incorporated into the stormwater management plan. Copies of the Municipal Regional Stormwater Permit are available from the Piedmont Public Works Department and on-line at cleanwaterprogram.org.

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

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

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

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

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

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

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

require all contractors performing work on the Project to maintain General Liability Insurance for protection from claims for damages because of bodily injury, including death, and claims for damages, other than to the contractor's work itself, to property which may arise out of or result from the contractor's operations. Such insurance shall be written for not less than \$1,000,000 per occurrence. The insurance shall include an endorsement requiring notice to the City if the insurance is cancelled or changed, and Property Owner shall immediately arrange for substitute insurance coverage. If the Property Owner does not have a general contractor, the Property Owner shall maintain property insurance and coverage for contractors, which is substantially equivalent to the contractor's requirement of this section.

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

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

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

8. **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.

9. **Approved Plan Set.** The approved plans are those submitted on May 20, 2014, with revised sheets submitted on May 30, 2014, after notices to neighbors were mailed and the application was available for public review.

10. **Hours of Construction.** The applicants shall be reminded that the hours of construction as outlined in the approved Construction Management Plan shall be strictly adhered to.

RESOLVED FURTHER, that the approval of the Planning Commission/City Council and any conditions of that approval shall not extend to any particulars set forth in the documents submitted for the project which are inconsistent with or in violation of any applicable law, including but not limited to Chapters 5 and 17 of the City Code, nor does the approval extend to matters not set forth, or inadequately represented, in submitted documents (whether or not consistent with applicable law). The City reserves the right to require compliance with

applicable laws and to attach conditions after initial approval is given, if noncompliance is discovered or additional conditions are considered necessary and appropriate in light of Commission/Council findings.

Moved by Theophilos, Seconded by Chase

Ayes: Chase, Ode, Simpson, Theophilos, Zhang

Noes: None

Absent: None

The Commission recessed for dinner and a discussion with the Acting City Attorney regarding variance approvals at 6:35 p.m. During the variance discussion, the Acting City Attorney explained (i) the legal distinctions between variance and design review, (ii) the fact that variance approvals are not precedent-setting; (iii) the requirement that all three findings related to variance must be made in order to grant approval; and (iv) the importance of the Commission to clearly document in the record its rationale/analysis for supporting variance approvals. The Commission reconvened its regular session at 7:25 p.m.

**Variance
429 Jerome Avenue**

The Property Owner is requesting variance to add a room eligible for use as a bedroom without supplying conforming parking. The requested variance is from Section 17.16 to allow a residence with 3 rooms eligible for use as bedrooms and 1 covered parking space measuring 11 ft. 5 in. by 18 ft. 11 in. in lieu of the code required minimum of two covered parking spaces, each measuring 9 ft. by 20 ft.

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

Public testimony was received from:

Ahmad Mohazab, Project Architect, described the on-going renovation of the current 2 bedroom/2bath plus library home. The proposal involves adding a 3rd bedroom by converting the library into a bedroom. He stressed that a 3 bedroom house is consistent with the neighborhood development pattern, the project is supported by neighbors and it is not physically possible to construct conforming parking on the property.

The Commission supported project approval, agreeing that the steep slope of the large, inverted pie-shaped lot justifies variance approval -- the steep driveway and its narrow width (due to the fact that the narrowest portion of the lot is at the street edge) precludes widening this driveway for purposes of accessing a possible 2-car garage in the rear. In addition, the proposed 3rd bedroom is being created within the home's existing building envelope so there is no change in the existing situation in terms of neighbor view, privacy or light.

Resolution 143-V-14

WHEREAS, the Property Owner is requesting permission to add a room eligible for use as a bedroom without supplying conforming parking located at 429 Jerome Avenue, Piedmont, California, which construction requires variance; and

WHEREAS, a variance from the requirements of Chapter 17 of the Piedmont City Code is necessary in order to add a 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 subject property, the Piedmont Planning Commission makes the following findings:

1. The project is categorically exempt under the California Environmental Quality Act, pursuant to Section 15301, Class 1(e)
2. The underlying lot and existing improvements present unusual physical circumstances, including but not limited to the irregular pie-shape of the lot, its narrow street frontage and its steep topography and driveway slope. Because of these circumstances, strictly applying the terms of this chapter would keep the property from being used in the same manner as other properties in the zone which conform to the zoning requirements.
3. The variance is compatible with the immediately surrounding neighborhood and the public welfare because (i) this is a larger than typical lot size for the neighborhood; (ii) a 3 bedroom house is appropriate for the size of the lot and is consistent with the neighborhood development standard; and (iii) the proposed bedroom addition will occur within the existing building envelope.
4. Accomplishing the improvement without a variance would cause unreasonable hardship in planning, design, or construction because it would prevent the applicant from utilizing existing living space within the basement level as a bedroom.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the variance application for construction at 429 Jerome Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

1. **Defense of Legal Challenges.** If there is a third party administrative, legal or equitable action challenging the project approvals, including CEQA issues, the Property Owner shall defend and indemnify the City against any liability, fees and costs arising out of the defense, including the costs of City's own counsel. If such an action is filed, the Property Owner and City shall then enter into an agreement regarding selection of counsel and other provisions related to the defense. For this purpose, "City" includes the City and its elected and appointed officials, agents, officers and employees.
2. **Garage Door.** The garage door shall be mechanically operable. If design modifications are required to accomplish this, those modifications shall be subject to staff review.

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

noncompliance is discovered or additional conditions are considered necessary and appropriate in light of Commission/Council findings.

Moved by Zhang, Seconded by Chase

Ayes: Chase, Ode, Simpson, Theophilos, Zhang

Noes: None

Absent: None

ADJOURNMENT

There being no further business, Chairman Ode adjourned the meeting at 8:00 p.m.