

PIEDMONT PLANNING COMMISSION

Regular Meeting Minutes for Monday, May 11, 2015

A Regular Session of the Piedmont Planning Commission was held May 11, 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 April 27, 2015, and revised agendas were posted for public inspection on May 6, 2015, and May 8, 2015.

CALL TO ORDER

Chairman Theophilos called the meeting to order at 5:02 p.m.

ROLL CALL

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

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

Council Liaison: Councilmember Tim Rood

APPROVAL OF MINUTES

Commissioner Ode requested that a correction be made to the April 13, 2015, meeting minutes indicating that Chairman Theophilos, not Chairman Ode, adjourned the meeting.

Resolution 11-PL-15

RESOLVED, that the Planning Commission approves as amended herein its meeting minutes of the April 13, 2015, regular hearing of the Planning Commission.

Moved by Ode, Seconded by Simpson

Ayes: Ode, Simpson, Theophilos, Zhang

Noes: None

Recused: Behrens, Chase

Absent:

CONSENT CALENDAR

The Commission placed the following applications on the Consent Calendar:

- 331 Howard Avenue (Exempt Second Unit Permit)
- 11 Calvert Court (Fence Design Review)

Resolution 12-PL-15

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

Moved by Ode, Seconded by Simpson

Ayes: Chase, Ode, Simpson, Theophilos, Zhang

Noes: None

Recused: None

Absent: None

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

Exempt Second Unit Permit 331 Howard Avenue

Resolution 113-SU-EX-15

WHEREAS, the Property Owner is requesting approval of a Second Unit Permit to legalize a 516 square foot lower level second unit believed to have been constructed prior to 1930, located at 331 Howard Avenue, Piedmont, California; 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

WHEREAS, the Planning Commission finds that the property is determined to have an Exempt Second Unit based on sufficient, reliable evidence that supports a finding that this property had a second unit prior to 1930. Such evidence includes a permit from 1925 that allowed for “new stairs to basement rooms. . . new cupboards in kitchen. . . fitting up a bedroom and shower bath in basement.” Physical evidence also exists in the form of architectural details, including built-in cabinetry in the kitchen, thermostats and fittings for a Murphy bed in the larger room, and a doorbell on the exterior door that are consistent with the space having been constructed in the early to mid 20th century, and used as a separate dwelling

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission determines that the basement unit qualifies as an Exempt second unit at 331 Howard Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following condition:

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.

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

**Fence Design Review
11 Calvert Court**

Resolution 130-DR-15

WHEREAS, the Property Owner is requesting permission to remove existing walls and steps at the front yard; construct new retaining walls at the front of the property with a maximum height of approximately seven feet six inches; install new handrails; add exterior lighting; and make hardscape modifications, located at 11 Calvert Court, 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 (including but not limited to height, bulk, area openings, breaks in the facade, line and pitch of the roof, materials, arrangements of structures on the parcel, and concealment of mechanical and electrical equipment) are aesthetically pleasing as a whole and harmonious with existing and proposed neighborhood development, because the project includes consistent materials that will give a more uniform appearance to the house, and the retaining walls will be tiered with landscaping in between to minimize its size.
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.
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 proposed change to the garage. As conditioned, the project is in conformance with the City's Pedestrian and Bicycle Master Plan and the Transportation Element of the City's General Plan, Action 10.B, which calls for the closing of gaps in the City's sidewalk system.
4. The project complies with Design Review Guidelines IV-1, IV-1(a), IV-1(b), IV-2, IV-2(a), IV-3, 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 11 Calvert Court, 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. Encroachment Permit. Before the issuance of a building permit, the Property Owner shall apply for an encroachment permit to allow for the construction within the public right-of-way.

3. Retaining Wall. The proposed retaining wall along the north property line and outside of the City's Right-of-Way shall be located entirely within the property lines of 11 Calvert Court. The north property line shall be located and marked by a licensed land surveyor to the specifications of the Chief Building Official. Written verification by the licensed land surveyor shall be provided to the Chief Building Official prior to foundation approval. In lieu of a survey, the property owner may submit a Retaining Wall Location agreement with the adjacent property owner at 5 Calvert Court with approval by the Building Official.

4. Addition of Sidewalk. The proposed design shall be modified to accommodate a 3-foot wide sidewalk with 6-inch curb along Calvert Court,

consistent with the City's General Plan's Action 10.B to close gaps in the City's sidewalk system and the Pedestrian and Bicycle Master Plan's priority project to install missing sidewalks. The new sidewalk and modified retaining wall and hardscape design shall be subject to the Public Works Director's review and approval. Construction of the City sidewalk to be paid for by the City.

Moved by Behrens, Seconded by Ode

Ayes: Behrens, Ode, Simpson, Theophilos, Zhang

Noes: None

Recused: Chase

Absent:

ANNOUNCEMENTS

Senior Planner Kevin Jackson announced that a home in Piedmont is included in the Green and Efficient Home Tour. He can be contacted at 510-420-3039 for more information.

Assistant Planner Jennifer Gavin announced that a compost giveaway for Piedmont residents will be held on Saturday, May 16, from 10 a.m. to 3 p.m. at Zion Lutheran Church in Piedmont. Residents should bring their own container to receive free compost.

PUBLIC FORUM

There were no speakers for the public forum.

REGULAR CALENDAR

Variance and Design Review 58 Nace Avenue

The Commission considered the following items of regular business:

The Property Owner is requesting permission to demolish the existing garage and construct a new taller garage in the same location; construct a new deck atop the garage with railing, barbecue, counters, benches, and planters; make window and door modifications; and install new exterior lighting. A variance is required to construct within the street-facing setback along Nace Avenue.

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

Public testimony was received from:

Tony Ibarra, Project Architect, described the project and explained that the new garage will be built in the same footprint as the existing garage. In response to questions from the Commission, he explained that the additional ceiling height of the garage will allow for greater storage capacity within the garage and will bring the deck surface up to the level of the existing living room. Mr. Ibarra discussed the property's small backyard, reported on precedents within the neighborhood, and described the efforts made to discuss the project with neighbors.

Commissioner Zhang initially expressed concern with the overall height and proportion of the garage and the deck's close proximity to the sidewalk. The Commission discussed these concerns and asked Planning Director Kate Black to comment on any relevant City policies. She explained that no City policies or guidelines directly prohibit such decks, but that front-yard decks and patios are often discouraged due to issues of privacy and a loss of neighborhood formality. After some discussion, the Commission unanimously decided that concerns that may be relevant to other properties were not significant in this case, because of the limited usable outdoor space, topography of the neighborhood, the corner location of the property, the size of the lot, precedents within the neighborhood,

the existing non-conformity of the garage, and full support of neighbors. The Commissioners agreed that the project will create a useful and attractive outdoor space. Commissioner Chase added that the new deck is at the same level as the main level of the house, and that constructing a deck instead at the opposite side of the property or at the ground level would not be feasible.

Resolution 102-V/DR-15

WHEREAS, the Property Owner is requesting permission to demolish the existing garage and construct a new taller garage in the same location; construct a new deck atop the garage with railing, barbecue, counters, benches, and planters; make window and door modifications; and install new exterior lighting, located at 58 Nace Avenue, Piedmont, California, which construction requires design review; and

WHEREAS, a variance from the requirements of Chapter 17 of the Piedmont City Code is necessary to construct within the street-facing setback along Nace Avenue; 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

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

1. The underlying lot and existing improvements present unusual physical circumstances, including but not limited to the fact that the property is a sloping, corner lot with little usable outdoor space, and the new garage will be in the same location as the existing non-conforming garage. Strictly applying the terms of this chapter would keep the property from being used in the same manner as other properties in the zone which conform to the zoning requirements.
2. The variance is compatible with the immediately surrounding neighborhood and the public welfare, because similar structures and uses exist in the neighborhood, and the project has unanimous neighbor support.
3. Accomplishing the improvements without variance would cause unreasonable hardship in planning, design, or construction, because there are no alternatives to this proposed project.

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

1. The exterior design elements (including but not limited to height, bulk, area openings, breaks in the facade, pitch of the roof, materials, arrangements of structures on the parcel, and concealment of mechanical and electrical equipment) are aesthetically pleasing as a whole and harmonious with existing and proposed neighborhood development, because the design is harmonious with the existing house and landscape.

2. The design is appropriate, considering its effect on neighboring properties' existing views, privacy and access to direct and indirect light, because there will be no significant 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 the ingress and egress of the property.
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, 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).

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 58 Nace 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. **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. **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.

5. Setback from Property Line Verification. Prior to foundation inspection, the 20-foot street facing setback along Howard Avenue shall be located and marked by a licensed land surveyor to the specifications of the Chief Building Official. The intent is to verify that the approved features are constructed at the approved dimension from the property line. Written verification by the licensed land surveyor shall be provided to the Chief Building Official prior to foundation approval.

6. BAAQMD Compliance. If the existing garage is a detached structure, 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.

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.

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: Chase, Ode, Simpson, Theophilos, Zhang

Noes: None

Recused:

Absent:

**Design Review
2 Somerset Road**

The Property Owner is requesting permission to install a hot tub at the northwest corner of the property.

Written notice was provided to neighbors. **One affirmative and one negative response forms** were received. **Correspondence** was received from Jack and Barbara Reding.

Public testimony was received from:

Jon Elvekrog, homeowner, described the project and explained the reasoning behind the location of the proposed hot tub. He explained that the existing patio is enclosed with a six-foot-high fence covered in ivy, and that the proposed location cannot be seen from the street. He further explained that the proposed hot tub was chosen because it has a non-continuous pump, which will be silent at night and will be enclosed and insulated within the hot tub. In response to questions from the Commission, Mr. Elvekrog explained that the hot tub is proposed to be located at a low point in the yard, which may help to minimize its impact on neighbors. He stated that by moving the hot tub to a different location, either farther from the neighbor at 64 Crest Road or outside of the 20-foot setback, the hot tub would be four feet higher in elevation, which may have a greater impact on neighbors.

Jack Reding, neighbor at 64 Crest Road, expressed concern for the location of the proposed hot tub because it is in close proximity to his bedroom windows and the noise that will be generated from the use of the hot tub, adding that in the years prior to the Elvekrogs' purchase of the property, he and his wife became accustomed to the virtual lack of outdoor activity and noise at 2 Somerset Road resulting from the ill-health and confinement of the elderly resident. He suggested that the hot tub be relocated, so that it is not as close to his house. In response to questions from the Commission, Mr. Reding stated that he could not readily see the neighbors' patio and had not heard them using it.

Alison Elvekrog, homeowner, explained that the family has used the existing patio extensively without receiving complaints from neighboring property owners and wants to improve it with a hot tub and garden.

In response to questions from the Commission, Planning Director Kate Black, Senior Planner Kevin Jackson, and Assistant Planner Jennifer Gavin explained that the Planning Commission must review applications proposing a secondary structure within the front yard setback, and that the building code regulates the amount of noise generated by mechanical equipment.

The Commission discussed many aspects of the application at length, including the distance from the proposed hot tub to the adjacent neighbors' windows; alternative options for the hot tub's location; different types of hot tubs that could be installed, including in-ground construction; and the various types of noises generated by hot tubs. Commissioners Simpson and Behrens were in complete support of the project as proposed, stating that the proposal is an appropriate use of an existing patio where outdoor recreation is a current activity; that the applicants were careful in their selection of the hot tub; and that there is substantial distance between the proposed hot tub and the neighbors' windows. They also argued that moving the hot tub could worsen the noise and privacy impacts on neighbors. Commissioners Chase and Ode discussed other options for locating the hot tub and possible screening enhancements to mitigate noise concerns, but ultimately decided that the proposed location was the best for the neighborhood. Chairman Theophilos was not in support of the application as proposed, citing his concerns for the location of the hot tub and its impacts on the neighbors.

Resolution 118-DR-15

WHEREAS, the Property Owner is requesting permission to install a hot tub at the northwest corner of the property, located at 2 Somerset 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 hot tub is of good quality and the proposed plan is aesthetically pleasing.
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 views or access to direct and indirect light. Privacy impacts are not significant, since the proposed hot tub is to be located on an existing, enclosed patio that has been used for over 40 years. The applicants have mitigated noise concerns by choosing a hot tub with an insulated, non-continuous pump that will be silent at night. It has a sound rating of 35 decibels, which meets the requirements of the building code. The hot tub will be located at a distance of approximately 30 feet from the nearest neighboring house and behind an ivy-covered, 6-foot fence. Alternative locations for the hot tub would likely have greater noise and privacy impacts on the neighbors.
3. The safety of residents, pedestrians, and vehicle occupants and the free flow of vehicular traffic are not adversely affected, considering the circulation

pattern, parking layout and points of ingress and egress, because there is no impact.

4. The project complies with Design Review Guidelines II-1, II-2, II-3, II-3(a), II-3(b), II-3(c), II-3(d), II-4, II-5, II-5(a), II-5(b), II-5(c), II-6, II-6(a), II-6(b), II-6(c), II-7, II-7(a). With regards to guideline II-7, alternative locations for the hot tub would likely have a greater impact on the visual and acoustical privacy of neighboring residences.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review application for proposed construction at 2 Somerset Road, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following condition:

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.

Moved by Simpson, Seconded by Behrens
Ayes: Behrens, Chase, Ode, Simpson,
Noes: Theophilos
Recused: Zhang
Absent:

**Variance and
Design Review
95 Arroyo Avenue**

The Property Owner is requesting permission to make several interior and exterior modifications to the property including constructing an approximately 351 square foot one story addition and exterior stair at the rear of the house; develop approximately 456 square feet of basement space; make modifications to windows and doors throughout the property; install new skylights; install a new built-in barbeque; and seek retroactive approval for a trampoline. Variances are required in order to construct within the east (right) side yard setback and to exceed the allowable structure coverage for the property.

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

Public testimony was received from:

Patrick Collins, homeowner, reported that the proposed project adheres to the Planning Commission's recommendations from the March 2015 meeting, during which the original proposal for a second story addition was denied with prejudice. He explained that the new proposal includes a rear addition and modifications to the existing basement to maximize space. He explained that they considered significant excavation of the basement, but due to limited light and the expense of excavation, it was deemed infeasible. He discussed the proposed location of the addition and described its minimal impact on the neighborhood. He stated that the neighbors are in full support of the current application.

Jack Backus, Project Architect, further explained the decision to develop the existing basement and add to the rear of the house. He explained that the setback variance allows the addition to be in line with the existing house. He argued that the proposed structure coverage is only slightly over the code limit, and he considered it to be in line with the Planning Commission's recommendations. Mr. Backus also described the roof design of the rear addition.

The Commissioners were unanimously in support of the application and commended the applicants for responding to their suggestions and addressing the neighbors' concerns. The Commissioners were in full support of the setback variance, stating that the application simply extends the existing non-conforming eaves; and were in full support of the structure coverage variance, due to the small size of the through lot and the lack of options for expanding the residence.

Resolution 131-V/DR-15

WHEREAS, the Property Owner is requesting permission to make several interior and exterior modifications to the property including constructing an approximately 351 square foot one story addition and exterior stair at the rear of the house; develop approximately 456 square feet of basement space; make modifications to windows and doors throughout the property; install new skylights; install a new built-in barbeque; and seek retroactive approval for a trampoline, located at 95 Arroyo 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 east (right) side yard setback and to exceed the allowable structure coverage for the property; 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

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

1. The underlying lot and existing improvements present unusual physical circumstances, including but not limited to the fact that the lot is a small, through lot with no other feasible options for expansion. Strictly applying the terms of this chapter would keep the property from being used in the same manner as other properties in the zone which conform to the zoning requirements, because the amount of space proposed for the house is typical for the neighborhood and there is no other feasible way to achieve the additional space.
2. The variances are compatible with the immediately surrounding neighborhood and the public welfare, because there is no negative impact on the neighbors and aligning the addition's eave with the existing non-conforming eave will make the project more visually appealing.
3. Accomplishing the improvements without the variances would cause unreasonable hardship in planning, design, or construction, because it would not be possible to create the additional space.

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

1. The exterior design elements are aesthetically pleasing as a whole and harmonious with existing and proposed neighborhood development. These elements include, but are not limited to, the fact that the proposed materials will match the existing materials, and the placement of the addition will create an attractive rear patio. The addition is designed to blend with the existing architecture of the house and will not have a tacked-on appearance.
2. The design is appropriate, considering its effect on neighboring properties' existing views, privacy and access to direct and indirect light, because the proposal was designed to have no negative impacts on the neighboring properties.
3. The safety of residents, pedestrians, and vehicle occupants and the free flow of vehicular traffic are not adversely affected, considering the circulation pattern, parking layout and points of ingress and egress, because there is no change in the ingress and egress.
4. The project complies with Design Review Guidelines II-1, II-2, II-3, II-3(a), II-3(c), II-3(d), II-5, II-5(a), II-6(a), II-6(b), II-6(c).

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the variance and design review application for proposed construction at 95 Arroyo 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 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 east property line 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).
4. **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.

5. 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.

6. **Approved Plan Set.** The approved plans are those submitted on April 21, 2015 with revisions submitted on May 6, 2015 after notices to neighbors were mailed and the application was available for public review.

Moved by Ode, Seconded by Chase

Ayes: Chase, Ode, Simpson, Theophilos, Zhang

Noes: None

Recused:

Absent:

ADJOURNMENT

There being no further business, Chairman Theophilos adjourned the meeting at 6:48 p.m.