

PIEDMONT PLANNING COMMISSION

Regular Meeting Minutes for Monday, November 9, 2015

A Regular Session of the Piedmont Planning Commission was held November 9, 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 October 26, 2015.

CALL TO ORDER

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

ROLL CALL

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

Staff: Interim Planning Director Kevin Jackson, Assistant Planners Jennifer Gavin and Emily Alvarez, Planning Technician Sunny Chao, and CivicSpark Fellow Matthew Anderson.

Council Liaison: Councilmember Tim Rood

ANNOUNCEMENTS

Chairman Theophilos announced that the City Council appointed former Alternate Planning Commissioner Eric Behrens to a regular Planning Commission position and appointed Tom Ramsey as the new Alternate Planning Commissioner.

Chairman Theophilos announced that the City Council has appointed former Senior Planner Kevin Jackson as Interim Planning Director. He also introduced CivicSpark Intern Matt Anderson who will be working with City Staff to implement the City's Climate Action Plan goals.

PUBLIC FORUM

There were no speakers for the public forum.

REGULAR SESSION

The Commission considered the following items of regular business:

Election of Vice Chair

Resolution 26-PL-15

RESOLVED, that the Planning Commission appoints Eric Behrens to serve as Vice Commission Chair through March 2016.

Moved by Zhang, Seconded by Chase

Ayes: Chase, Ode, Theophilos, Zhang

Noes: None

Recused: Behrens

Absent: None

Approval of Minutes

Commissioner Zhang requested the following change to the October 12, 2015, meeting minutes: in the last paragraph under Short Term Rentals (page 33) the sentence referring to his opinion should read "Commissioner Zhang expressed his opinion that hosted short term rentals should be allowed without limitations *on the time period.*"

Resolution 27-PL-15

RESOLVED, that the Planning Commission approves as modified its meeting minutes of the October 12, 2015, regular hearing of the Planning Commission.

Moved by Zhang, Seconded by Ode

Ayes: Behrens, Chase, Ode, Theophilos, Zhang

Noes: None

Recused: None
Absent: None

Consent Calendar

The Commission placed the following applications on the Consent Calendar and added Conditions #8 and #9 to the approval of 140 Lexford Road:

- 168 Oak Road (Variance and Design Review)
- 140 Lexford Road (Design Review)
- 201 Crocker Avenue (Variance and Design Review)
- 215 La Salle Avenue (Fence Design Review)
- 1317 Oakland Avenue (Variance and Design Review)

Resolution 28-PL-15

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

Moved by Chase, Seconded by Zhang

Ayes: Behrens, Chase, Ode, Theophilos, Zhang

Noes: None

Recused: None

Absent: None

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

**Variance and
Design Review
168 Oak Road**

Resolution 215-V/DR-15

WHEREAS, the Property Owner is requesting permission to make modifications at the front of the property including to demolish the existing detached garage and front entry way and to construct a new 465-square-foot detached garage and front walkway and stairs; and to add new exterior lighting, located at 168 Oak Road, Piedmont, California, which construction requires design review; and

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

WHEREAS, after reviewing the application, plans and any and all testimony and documentation submitted in connection with such application, and after having visited the subject property, the Piedmont Planning Commission finds that the project is categorically exempt under the California Environmental Quality Act, pursuant to CEQA Guidelines Section 15301, Class 1(e); and

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

1. The underlying lot and existing improvements present unusual physical circumstances, including but not limited to: the front of the property is at a fairly steep slope and the property cannot be reasonable excavated to place parking beneath the house. Strictly applying the terms of this chapter would keep the property from being used in the same manner as other properties in the zone that conform to the zoning requirements. Most houses on the block have noncompliant front yard setbacks.

2. The variance is compatible with the immediately surrounding neighborhood and the public welfare, because most of the houses on the street have garages

and stairs at the front property line. Public welfare will be enhanced because the project will provide additional off-street parking.

3. Accomplishing the improvements without variance would cause unreasonable hardship in planning, design, or construction, because there is not enough space on the property to construct a garage outside of the setback. Additionally, the existing stairs and garage are in great need of repair.

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

1. The exterior design elements are aesthetically pleasing as a whole and harmonious with existing and proposed neighborhood development. These elements include but are not limited to: the proposed arch above the garage doors is aesthetically pleasing and consistent with the original house; the bulk of the garage is not proposed to increase; and the applicant has made every effort to improve access and preserve greenery.

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 effect.

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 project will improve pedestrian ingress and egress and will provide two off-street parking spaces.

4. The project complies with Design Review Guidelines II-1, II-2, II-3, II-3(a), II-3(b), II-3(c), II-3(d), II-4, II-5, II-5(a), II-6, II-6(a), II-6(b), II-6(c), 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 168 Oak Road, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

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

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

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

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. **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.

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

7. **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, west and south property lines as shown on the approved plans. The intent is to verify that the approved features are constructed at the approved dimension from the property line(s).

8. **Encroachment Permit.** Before the issuance of a building permit, the Property Owner shall apply for an encroachment permit to allow for the modified retaining wall at the front of the property within the public right-of-way.

9. **Curb Cut Design.** The design of the new driveway ramp located within the City Right of Way must be approved by the Chief Building Official prior to the construction of aforementioned feature.

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

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

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

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. **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.

15. **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 all proposed landscaping in the front yard. 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.

Moved by Chase, Seconded by Behrens

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

**Design Review
140 Lexford Road**

Resolution 295-DR-15

WHEREAS, the Property Owner is requesting permission to make modifications at the rear of the house including to construct a new lower level deck and to make modifications to windows and doors, located at 140 Lexford Road, Piedmont, California, which construction requires design review; and

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

1. As conditioned, 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 wood-finished windows, which are in keeping with the neighborhood; the lower deck, which has a cohesive design and mitigates the tacked-on appearance of the existing deck; and the new guardrails, which will be consistent with the existing guardrails.
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 neighboring properties' privacy and views.
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 to these elements.
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-6, II-6(a), II-6(b), II-6(c), II-7, II-7(a).

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review application for proposed construction at 140 Lexford Road, 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. **Window and Door Material.** As specified in the plans, the building material for the new windows and doors shall be fiberglass clad.
3. **Window Color Scheme.** All the windows on the house shall have a consistent color scheme.

4. **Lighting.** All new exterior lights are to be downward directed with an opaque shade and have a maximum of 60 watts.

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. **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.

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

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

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

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

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

8. **Guardrail Consistency:** The guardrail at the existing upper level deck and at the new lower level deck at the rear of the house shall have a consistent design subject to staff review and approval.

9. **Windows.** All of the existing and proposed windows, except for the wood windows at the front, shall be a consistent material subject to Staff review and approval.

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

**Variance and
Design Review
201 Crocker Avenue**

Resolution 315-V/DR-15

WHEREAS, the Property Owner is requesting permission to install a concrete sports court and basketball hoop at the northwest corner of the property, located at 201 Crocker Avenue, Piedmont, California, which construction requires design review; and

WHEREAS, a variance from the requirements of Chapter 17 of the Piedmont City Code is necessary in order to pave a portion of the yard within the 20-foot right (north) side street setback along Lafayette Avenue for a purpose other than ingress and egress; and

WHEREAS, after reviewing the application, plans and any and all testimony and documentation submitted in connection with such application, and after having visited the subject property, the Piedmont Planning Commission finds that the project is categorically exempt under the California Environmental Quality Act, pursuant to CEQA Guidelines Section 15301, Class 1(e); and

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

1. The underlying lot and existing improvements present unusual physical circumstances, including but not limited to the fact that the lot is a corner lot with two street-fronting setbacks. A solid six-foot high fence was previously approved along this street frontage. The side yard, which is used as a back yard, is an appropriate location for the sport court.
2. The variance is compatible with the immediately surrounding neighborhood and the public welfare, because other properties in the neighborhood have street-facing side yards that are used in a similar manner.

3. Accomplishing the improvements without variance would cause unreasonable hardship in planning, design, or construction, because typical backyard uses would otherwise be limited on this corner lot.

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

1. The exterior design elements are aesthetically pleasing as a whole and harmonious with existing and proposed neighborhood development. These elements include but are not limited to: the four-inch thick sport court creates no mass; and the basketball hoop structure is not attached to the house and is minimal in scale compared with the scale of the house.

2. The design is appropriate, considering its effect on neighboring properties' existing views, privacy and access to direct and indirect light, because it creates no impact to the neighboring properties. The basketball hoop is away from 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 circulation pattern, parking layout, or points of ingress and egress.

4. The project complies with Design Review Guidelines II-1, II-2, II-4, II-6.

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 201 Crocker 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. **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.

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

**Fence Design Review
215 La Salle Avenue**

Resolution 335-DR-15

WHEREAS, the Property Owner is seeking retroactive approval for the construction of a wood fence located within the 20 foot setback along Muir Avenue, located at 215 La Salle Avenue, Piedmont, California, which construction requires design review; and

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

1. The exterior design elements are aesthetically pleasing as a whole and harmonious with existing and proposed neighborhood development. These elements include but are not limited to the fact that the fence is recessed on this corner lot and has been designed in a way to be unobtrusive and partially screened by vegetation.
2. The design is appropriate, considering its effect on neighboring properties' existing views, privacy and access to direct and indirect light, because the fence is recessed from the street and replaces a preexisting fence.
3. The safety of residents, pedestrians, and vehicle occupants and the free flow of vehicular traffic are not adversely affected, because the fence is recessed and not directly located on the street.
4. The project complies with Design Review Guidelines V-1, V-2, V-5(a), V-5(b), V-5(c), V-7, V-8, V-10, V-11.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review application for proposed construction at 215 La Salle 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. **Fence Location.** The new fence, including all footings and posts, shall be located completely within the applicants' property. At the discretion of the Building Official, a licensed land surveyor may be required by the Building Department to verify and mark the location of the property lines at the time of foundation inspection to verify the approved setback dimension measured to the new fence and that it is completely within the applicants' property. In lieu of a survey, a fence location agreement with the neighboring property may be submitted.

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

**Variance and
Design Review
1317 Oakland Avenue**

Resolution 337-V/DR-15

WHEREAS, the Property Owner is requesting permission to remodel and stylistically change the 1,854-square-foot 3-bedroom residence through the following alterations: the replacement of the flat and faux Mansard roof with a front and side gable roof form that increases the building height; new exterior wall siding; the removal of the front bay window; window and door modifications throughout; reconfigured front and rear entry stairs; new exterior lighting; hardscape and landscape modifications; and various changes to the interior, located at 1317 Oakland Avenue, Piedmont, California, which construction requires design review; and

WHEREAS, two variances from the requirements of Chapter 17 of the Piedmont City Code are necessary in order to construct within the 20-foot front yard setback and to exceed the hardscape surface coverage limit; and

WHEREAS, after reviewing the application, plans and any and all testimony and documentation submitted in connection with such application, and after having visited the subject property, the Piedmont Planning Commission finds that the project is categorically exempt under the California Environmental Quality Act, pursuant to CEQA Guidelines Section 15301, Class 1(e); and

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

1. The underlying lot and existing improvements present unusual physical circumstances, including but not limited to the fact that the property is small and noncompliant in size, and it has an existing noncompliant hardscape surface coverage. Strictly applying the terms of this chapter would impose an unreasonable hardship on the applicant that would keep the applicant from

enjoying the property in the same manner as other noncompliant properties located next door, on the west side and elsewhere in the zone.

2. The variance is compatible with the immediately surrounding neighborhood and the public welfare, because it will not have an impact on the neighboring area and is in keeping with other properties on Latham Street and Oakland Avenue, which have structures located within the 20-foot setback.

3. Accomplishing the improvements without variance would cause unreasonable hardship in planning, design, or construction, because there is little room on the property to facilitate the vast improvements in usability proposed for the property.

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

1. The exterior design elements are aesthetically pleasing as a whole and harmonious with existing and proposed neighborhood development, because the applicants propose to remove the sheet siding and mansard roof, which are not in keeping with the neighborhood, and improve the aesthetics of the house. The distance between the addition and adjacent residences is reasonable and appropriate due to the existing topography and neighborhood development pattern. Upper level setbacks greater than the setbacks required for the lower level have been considered and are not necessary to reduce losses of ambient and reflected light, because there will be no impact on the neighbors' ambient and reflected light.

2. The proposed addition has been designed in a way that reasonably minimizes view and light impacts on neighboring properties, because there will be no impact.

3. The size and height of the addition is commensurate with the size of the lot (excluding the portions of the lot that cannot reasonably be built on), and is in keeping with the existing neighborhood development pattern, because most of the structures in that neighborhood are constructed on small lots with no reasonable area for expansion.

4. The safety of residents, pedestrians, and vehicle occupants and the free flow of vehicular traffic are not adversely affected, considering the circulation pattern, parking layout and points of ingress and egress. The existing or proposed on-site parking is appropriate to the size of the new additions, and additional parking is not required to prevent unreasonable short and/or long term parking impacts on the neighborhood, because the existing garage will remain. The proposed stairs will improve the safety of pedestrian ingress and egress.

5. The project complies with Design Review Guidelines II-1, II-2, II-3, II-3(a), II-3(b), II-3(c), II-3(d), II-4, II-5, II-5(a), II-5(b), II-5(c), II-6, II-6(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 1317 Oakland Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

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

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

3. **Exterior Lighting.** All new exterior light fixtures shall be downward directed with an opaque or translucent shade that completely covers the light bulb.

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

5. **Final Landscape Plan.** Before issuance of a building permit, the Property Owner shall submit for staff review and approval a Final Landscape Plan for the entire site that includes and shows trees proposed for retention. 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.

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

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

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

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

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

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

b. Renovation / New Construction. Pursuant to Section 17.32.6 of the Municipal Code, if for any reason more than 70% of the physical structure (as determined by the Building Official) is demolished or destroyed, the building shall conform to new building and planning Code requirements. If this occurs during demolition, all work must stop and a new hearing and public review by the Planning Commission is required.

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

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

- i. Completion of Rough Framing;
- ii. Completion of Electrical;
- iii. Completion of Plumbing;
- iv. Completion of Mechanical;
- v. Completion of Home;
- vi. Completion of Hardscaping and Landscaping; and
- vii. any further construction benchmarks and conditions of occupancy as may be determined by the Director of Public Works.

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

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

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

Regular Calendar

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

Short Term Rentals

Interim Planning Director Jackson introduced the topic of Short Term Rentals and reported on the previous discussions that the Planning Commission and City Council have had regarding Short Term Rentals. He reported that at the September 21, 2015, City Council meeting, the Council directed Staff to propose code amendments to prohibit Short Term Rentals of second units and apartments and asked the Planning Commission to consider making recommendations for Short Term Rentals of primary dwelling units. Interim Planning Director Jackson explained that the two essential questions for the Planning Commission are 1) whether to prohibit or permit hosted Short Term Rentals within primary dwelling units, and 2) whether to prohibit or permit un-hosted Short Term Rentals of primary dwelling units. He explained that if the Planning Commission recommends permitting either type of Short Term Rental, further discussion is necessary to determine the Commission's recommendations on such things as restrictions, application requirements, business license tax regulations, and safety certification requirements.

Correspondence was received from: Alicia Gruber Kalamas, Jane Klein, Rick Schiller, and Patty White.

Public testimony was received from:

Jane Klein, Jordie B., and Venus French all expressed their support for Short Term Rentals and explained how they benefit the community. They argued that Short Term Rentals provide safe, convenient lodging for friends and family of Piedmont residents; offer Piedmont residents additional—sometimes necessary—income; and enrich the community with diversity. They urged the Planning Commission to disregard unfounded fears and refrain from an outright ban on Short Term Rentals. They recommended a more nuanced approach with fair and reasonable regulations on Short Term Rentals. In response to questions from the Commission, Ms. Klein explained that Short Term Rental Service Providers offered her a level of safety that she did not feel was available when searching for long-term tenants, and Ms. French estimated that about two-thirds of her guests at her Short Term Rental in Oakland have a vehicle.

Alicia Kalamas spoke in opposition to Short Term Rentals and presented research she conducted on Short Term Rental listings in Piedmont. She referred to 24 different listings and read excerpts from the host's descriptions and guest's reviews. She referred to one listing that indicated that the house could be used as

a wedding venue. Ms. Kalamas also cited a California Supreme Court case from 1925 discussing the impact of short-term tenants on the residential character of neighborhoods.

The Commissioners discussed the topic of Short Term Rentals at length. Commissioners Behrens, Chase, Ode and Theophilos were in favor of prohibiting both hosted and un-hosted Short Term Rentals in all housing types: second units, apartment units and primary dwelling units. They argued that Short Term Rentals would: negatively impact parking, particularly on weekends when residents are home and tourists tend to travel; violate Piedmont's home occupation regulations that prohibit business visitors and deliveries; and undermine the character of Piedmont as a tight-knit, small town, single-family residential community by commercializing residential properties. The Commissioners added that the regulation and inspection of Short Term Rentals would be a drain on the City's limited resources, that Piedmont is not a tourist destination, and that nearby cities offer many short term lodging options. Commissioner Behrens stated that Short Term Rentals are at odds with Section 17.1 of the Municipal Code, and Commissioner Theophilos argued that Short Term Rentals are in violation of Policy 2.8 of the Housing Element of the City's General Plan. Commissioner Zhang agreed that un-hosted Short Term Rentals should be prohibited, but he expressed support for hosted Short Term Rentals. He noted that Second Units were initially received with community opposition but are now perceived to be a benefit to the City and that this perception will likely apply to Hosted Short Term Rentals in the long run. He commented on how technology has changed the way people live and suggested that Piedmont embrace hosted Short Term Rentals as part of this change. He also commented on some of the benefits of hosted Short Term Rentals, including increased investment in properties due to the owner's responsibility and incentive to provide short term renters an attractive lodging experience. In light of the discussion favoring the prohibition of all Short Term Rentals, the Commission determined it was unnecessary to have further discussion of such things as restrictions and application requirements.

Resolution 29-PL-15

RESOLVED, that the Planning Commission recommends that the City Council prohibit all Short Term Rentals in the City of Piedmont.

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

Resolution 30-PL-15

RESOLVED, that the Planning Commission amends the prior resolution to recommend that the City Council prohibit all Short Term Rentals in the City of Piedmont, based on their incompatibility with Section 17.1 of the Municipal Code and Policy 2.8 of the Housing Element of the City's General Plan.

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

ADJOURNMENT

There being no further business, Chairman Theophilos adjourned the meeting at 6:36 p.m.

