

PIEDMONT PLANNING COMMISSION

Regular Meeting Minutes for Monday, September 14, 2015

A Regular Session of the Piedmont Planning Commission was held September 14, 2015, in the City Hall Council Chambers at 120 Vista Avenue. In accordance with Government Code Section 54954.2(a) the agenda for this meeting was posted for public inspection on August 31, 2015.

CALL TO ORDER

Commissioner Ode called the meeting to order at 5:05 p.m.

ROLL CALL

Present: Commissioners Philip Chase and Susan Ode, and Alternate Commissioner Eric Behrens

Absent: Commissioners Tony Theophilos and Tom Zhang (both excused)

Staff: Planning Director Kate Black, Senior Planner Kevin Jackson, Assistant Planners Jennifer Gavin and Emily Alvarez, Planning Technician Sunny Chao, and Assistant City Attorney Chad W. Herrington

Council Liaison: Councilmember Tim Rood

AGENDA AMENDMENT

Commissioner Ode announced that since Commission Chair Tony Theophilos is absent from the meeting and Vice Chair Louise Simpson recently resigned from the Planning Commission, the agenda must be amended to elect a Chair pro Tem for this meeting.

Resolution 18-PL-15

WHEREAS, the Planning Commission amends the agenda to elect a Chair pro Tem, pursuant to Government Code Section 54954.2(b)(2), making the following findings:

1. There is a need to take immediate action prior to the next regularly scheduled meeting; and
2. The need to take action came to the attention of the City after the posting of the agenda.

RESOLVED, that based on the findings set forth heretofore, the Piedmont Planning Commission amends the agenda to elect a Chair pro Tem, pursuant to Government Code Section 54954.2(b)(2).

Moved by Chase, Seconded by Behrens

Ayes: Behrens, Chase, Ode

Noes: None

Recused: None

Absent: Theophilos, Zhang

CHAIR PRO TEM

Resolution 19-PL-15

RESOLVED, that the Planning Commission elects Commissioner Susan Ode as the Chair pro Tem for this meeting.

Moved by Chase, Seconded by Behrens

Ayes: Behrens, Chase, Ode

Noes: None

Recused: None

Absent: Theophilos, Zhang

APPROVAL OF MINUTES

Resolution 20-PL-15

RESOLVED, that the Planning Commission approves as submitted its meeting minutes of the August 10, 2015, regular hearing of the Planning Commission.
Moved by Behrens, Seconded by Chase
Ayes: Behrens, Chase, Ode
Noes: None
Recused: None
Absent: Theophilos, Zhang

AGENDA ORDER

Chair pro Tem Ode announced that Staff has asked the Assistant City Attorney to be present during the discussion of Agenda Item #3, 139 Lexford Road. She explained that due to a prior commitment, he is not likely to be present at the start of the Regular Session. She asked the Commission to consider altering the agenda to postpone the hearing for Agenda Item #3 until the arrival of the Assistant City Attorney.

Resolution 21-PL-15

RESOLVED, that the Planning Commission approves to amend the order of the agenda, so that the Assistant City Attorney can be present during the discussion of Agenda Item #3.
Moved by Behrens, Seconded by Chase
Ayes: Behrens, Chase, Ode
Noes: None
Recused: None
Absent: Theophilos, Zhang

CONSENT CALENDAR

The Commission placed the following applications on the Consent Calendar and added Condition #5 to the approval of 97 Florada Avenue:

- 353 Hillside Avenue (Design Review)
- 1375 Grand Avenue (Conditional Use Permit)
- 97 Florada Avenue (Variance and Design Review)
- 55 Saint James Place (Variance and Design Review)
- 55 Sharon Avenue (Design Review and Fence Design Review)

Resolution 22-PL-15

RESOLVED, that the Planning Commission approves the Consent Calendar as noted.
Moved by Chase, Seconded by Behrens
Ayes: Behrens, Chase, Ode
Noes: None
Recused: None
Absent: Theophilos, Zhang

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

Design Review 353 Hillside Avenue

Resolution 267-DR-15

WHEREAS, the Property Owner is requesting permission to remodel and expand the existing 3,492-square-foot, 4-bedroom house by 1,052 square feet through: the construction of a two-story front addition with a new front entry, and a one-story rear basement addition with a main-level roof deck atop; the reconfiguration of the rear deck stairs; window, door and garage door modifications; new and replacement exterior light fixtures and guardrails; the

construction of new free-standing walls in the side yards; the addition of decorative window grilles; various changes to the interior including the development of additional living space on the basement level; and hardscape changes in the front yard, located at 353 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 the subject property, the Piedmont Planning Commission finds that the project is categorically exempt under the California Environmental Quality Act, pursuant to Section 15301, Class 1(e) and the proposal conforms with the criteria and standards of Section 17.20.9 of the Piedmont City Code:

1. The exterior design elements are aesthetically pleasing as a whole and harmonious with existing and proposed neighborhood development. 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 the project will not significantly impact neighbors.
2. The proposed addition has been designed in a way that reasonably minimizes view and light impacts on neighboring properties, because the project does not appear to impact the neighbors.
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 some of the neighboring properties have similar improvements.
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 parking impacts on the neighborhood, because there is no change in the parking layout or ingress and egress of the property.
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), V-1, V-2, V-3, V-4, V-5, V-5(a), V-5(b), V-5(c), V-6, V-7, V-8, V-9, V-10, V-11.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review application for proposed construction at 353 Hillside 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.** As specified in the plans, all new exterior light fixtures shall be downward directed with an opaque or translucent shade that completely covers the light bulb.

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

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

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

7. **Final Landscape Plan for the Front Yard.** Before issuance of a building permit, the Property Owner shall submit for staff review and approval a Final Landscape Plan for 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.

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.

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

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

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

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

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

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

1375 Grand Avenue

WHEREAS, Tara Natural Medicine is requesting a Conditional Use Permit for a new natural medicine office, located at the existing commercial building at 1375 Grand Avenue, Piedmont, California; and

WHEREAS, the Piedmont Planning Commission has reviewed the application, the staff report, and any and all other documentation and testimony submitted in connection with the application and has visited the subject property; the Piedmont Planning Commission recommends that the project is categorically exempt under the California Environmental Quality Act, pursuant to Section 15301, Class 1(e) and the proposal conforms with the criteria and standards of Section 17.24.7 of the Piedmont City Code:

1. The proposed use is compatible with the General Plan and conforms to the zoning code, in that it's a natural medicine facility with support from a number of residents, and its impact on neighboring properties is no different than that from other businesses.
2. The use is primarily intended to serve Piedmont residents, in that the business is going to be much more accessible to Piedmont clientele.
3. The use will not have a material adverse effect on the health, safety or welfare of persons residing or working in the vicinity, in that the hours are reasonable and limited to normal working hours. There will be no significant noise impacts.

RESOLVED, that in consideration of the findings and facts set forth above, the Piedmont Planning Commission recommends approval by the City Council of the Conditional Use Permit application by Tara Natural Medicine at 1375 Grand Avenue, Piedmont, California, subject to the following conditions:

1. **Terms of the Approval.** A review of the conditional use permit shall occur in October 2017 and the conditional use permit shall have the following operational characteristics:

- a. **Office Hours: 8:00 a.m. to 6:00 p.m.; Monday through Friday; 9 a.m. to 2 p.m. Saturday; One evening a week until 7pm.**
- b. **Types of Staff/Personnel: 3-5 health professionals, 1-2 Office Assistants**

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.

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

Absent: Theophilos, Zhang

**Variance and
Design Review
97 Florada Avenue**

Resolution 273-V/DR-15

WHEREAS, the Property Owner is requesting permission to replace a trellis cover at the rear deck with a new shed roof, located at 97 Florada 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 to construct within the 20-foot setbacks from the private roadway adjacent to the right and rear property lines; and

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

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

1. The underlying lot and existing improvements present unusual physical circumstances, including but not limited to: the existence of a private road at the rear of the property, which requires a 20-foot setback, making such improvements impossible without a variance. Strictly applying the terms of this chapter would keep the property from being used in the same manner as other properties in the zone that conform to the zoning requirements.
2. The variance is compatible with the immediately surrounding neighborhood and the public welfare, because there will be no impact on the public welfare and the project will improve the compatibility of the house with the immediately surrounding neighborhood.
3. Accomplishing the improvements without variance would cause unreasonable hardship in planning, design, or construction, because, due to the 20-foot setback from the private road, the proposed roof replacement would be impossible without a variance.

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

1. The exterior design elements are aesthetically pleasing as a whole and harmonious with existing and proposed neighborhood development. These elements include but are not limited to: the fact that the existing, unsightly trellis will be replaced with a pitched roof to match the existing pitched roof on the main part of the residence.
2. The design is appropriate, considering its effect on neighboring properties' existing views, privacy and access to direct and indirect light, because there will be no impact.

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

4. The project complies with Design Review Guidelines II-1, II-2, II-3(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).

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 97 Florada Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

1. **Roof Color.** The color of the shingle on the new shed roof shall match the color of the shingles elsewhere on the house's roof.

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.** Upon the request of the Chief Building Official and prior to frame inspection, the applicant shall submit written verification by a licensed land surveyor stating that the construction is located at the setback dimension from the northwest (right) and southwest (rear) property lines as shown on the approved plans. The intent is to verify that the approved features are constructed at the approved dimension from the property lines.

4. **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.

5. **Roof Design.** The northwest end of the shed roof shall be enclosed in a manner and material that is consistent with the gables elsewhere on the residence, subject to staff review and approval.

Moved by Chase, Seconded by Behrens

Ayes: Behrens, Chase, Ode

Noes: None

Recused: None

Absent: Theophilos, Zhang

**Variance and
Design Review
55 Saint James Place**

Resolution 274-V/DR-15

WHEREAS, the Property Owner is requesting permission to reconfigure the front entry path and porch and install handrails along the path; install a guardrail atop the front retaining wall; and make various interior changes within the basement level including the addition of a fourth bedroom, located at 55 Saint James Place, 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 increase the number of bedrooms to four without supplying the two required conforming parking spaces; and

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

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

1. The underlying lot and existing improvements present unusual physical circumstances, including, but not limited to the fact that the property is a steep, downsloping, elbow-shaped lot. Strictly applying the terms of this chapter would keep the property from being used in the same manner as other properties in the zone that conform to the zoning requirements.
2. The variance is compatible with the immediately surrounding neighborhood and the public welfare, because there are other four-bedroom houses without conforming parking in the immediate neighborhood. Additionally, the residence is located on a cul-de-sac, and the proposal will not impact parking as much as it would on a well travelled thru street.
3. Accomplishing the improvements without variance would cause unreasonable hardship in planning, design, or construction, because it would be very difficult to put an extra garage anywhere on the property.

WHEREAS, with regard to design review, the Planning Commission finds that the proposal conforms with the criteria and standards of Section 17.20.9 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 improved appearance of the entryway, which is much more compatible with the neighborhood than the existing entryway.
2. The design is appropriate, considering its effect on neighboring properties' existing views, privacy and access to direct and indirect light, because there will be no impact.

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

4. The project complies with Design Review Guidelines II-1, II-2, II-3(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).

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the variance and design review application for proposed construction at 55 Saint James Place, 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 of the entry path and guardrail within the public right-of-way.

3. **Final Landscape Plan.** Before issuance of a building permit, the Property Owner shall submit for staff review and approval a Final Landscape Plan for the front 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.

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.

Moved by Behrens, Seconded by Chase

Ayes: Behrens, Chase, Ode

Noes: None

Recused: None

Absent: Theophilos, Zhang

**Design Review and
Fence Design Review
55 Sharon Avenue**

Resolution 279-DR-15

WHEREAS, the Property Owner is requesting permission to make several modifications to the rear yard including a new built-in barbeque, new and modified retaining walls, fence, and gates, located at 55 Sharon Avenue, Piedmont, California, which construction requires design review; and

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

1. The exterior design elements are aesthetically pleasing as a whole and harmonious with existing and proposed neighborhood development. These elements include, but are not limited to, the fact that the proposed structure will be similar in appearance to the existing rock wall.
2. The design is appropriate, considering its effect on neighboring properties' existing views, privacy and access to direct and indirect light, because it cannot be seen from the neighbors' 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 the new structure will not impact the safety of residents, pedestrians, and vehicle occupants and the free flow of vehicular traffic.
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), V-1, V-2, V-3, V-4, V-5, V-5(a), V-5(b), V-5(c), V-6, V-7, V-8, V-9, V-10, V-11.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review application for proposed construction at 55 Sharon 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. **Encroachment Permit.** Before the issuance of a building permit, the Property Owner shall apply for an encroachment permit to allow for the construction of the built in barbeque and retaining walls within the public right-of-way.

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

PUBLIC FORUM

There were no speakers for the public forum.

AGENDA ORDER

The Assistant City Attorney arrived, and the Commission voted to resume the original order of the agenda.

Resolution 23-PL-15

RESOLVED, that the Planning Commission resumes the original order of the agenda.

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

REGULAR CALENDAR

The Commission considered the following items of regular business:

**New House
Design Review
139 Lexford Road**

The Property Owner is requesting permission to construct a new, approximately 4,437-square-foot, single-family residence on an existing vacant lot in Zone A. The new residence is proposed to be four levels with three bedrooms, two bathrooms, a half bath, a living room, dining room, kitchen, family room, office, laundry room, elevator, conforming two-car garage. A front terrace is proposed at the upper level and patios are proposed at the rear of the house. A landscape plan with retaining walls, stairs, walkways and exterior lighting is proposed.

Written notice was provided to neighbors. **Three affirmative and two negative response forms** were received. **Correspondence** was received from: Christopher Van Gundy, Stuart I. Block & Samantha Nobles-Block, Howard & Heidi Fields, Kevin Chen, Keri Elmquist, Jeanne and Mark Berres, Yi Zhang & Xiaoshan Cai.

Public testimony was received from:

Leor Lakritz, Property Owner, spoke about the project and assured the Commission that he plans to do whatever it takes to keep his neighbors safe and to comply with the requirements of the building and planning departments.

Kirk Peterson, Project Architect, explained that the proposed design is the same design approved by the Commission in 2007. He discussed the challenges of the site and how the architecture of the proposed house responds to these challenges. He also outlined the attempts that the applicant made to discuss the project with the neighbors. In response to questions from Commissioner Chase, Mr. Peterson discussed the design of the elevator tower and agreed to add decorative windows to the tower.

Gene St. Onge, the Project Structural Engineer, discussed his experience with home construction throughout the hills and stated that the proposed house conforms to the topography better than most. He explained that the proposed retaining walls, at a maximum of about twelve feet tall, are less than half as high as the originally approved retaining walls. He added that the minor mudslides that currently occur on the site should be mitigated or eliminated by the proposed construction. In response to questions from the Commission, Mr. St. Onge explained that the site is made up of unusually hard rock at a shallow depth, and that heavier machinery and additional excavation efforts may be required at greater depths. He indicated that the project Soils Engineer would better address these matters.

Chris Van Gundy, neighbor at 132 Lexford Road, argued that proper studies should be conducted under the California Environmental Quality Act (CEQA) to determine the human and environmental impacts of constructing on a site with unusual circumstances. He acknowledged that the studies will not necessarily preclude construction on the site, but will inform the construction. He referenced three geotechnical reports conducted to date, and stated that the report by Alan Kropp identified a landslide danger on the site.

Alan Kropp, the neighbors' Geotechnical Consultant, explained that the hardness of the bedrock on site is very unusual. He expressed his concern that the excavation contractor may be unprepared for the hardness of the rock, and he stressed the importance of proper shoring to prevent the toppling or sliding of rock. He suggested that the project include specific criteria for hard rock drilling and excavation. Mr. Kropp answered questions from the Commission regarding ways to prevent the toppling and sliding of rock.

Samantha Nobles-Block and Stuart Block, neighbors at 87 Huntleigh Road, both spoke to express their concerns with the safety of the proposed excavation. They explained that their house is located downhill from the proposed project, and asked the Commission to ensure that all safety measures are taken during site excavation. Mr. Block suggested that the developer provide specific plans for temporary shoring and permanent slope stabilization on site, and that funds are in place to secure the project in the case that the excavation cannot be completed.

In response to Commissioners questions, Planning Director Black reported on the single-family construction project approvals that have taken place on steep lots within Piedmont and required extensive excavation in recent years. She discussed several of the conditions of approval that prior Planning Commissions

and City Councils have developed for such sites to address the concerns related to their development, including: a condition that requires inspection of neighboring properties for excavation-related damage; conditions that require insurance to provide funds for securing an abandoned construction site; and a condition that requires the geotechnical engineer to sign-off on the shoring and excavation plans. Planning Director Black also discussed the review process for the engineering and geotechnical reports, which includes reviews by the City Engineer and Building Official, as well as a peer review by a third-party consultant. She also stated that the City has no records related to an apparent landslide on the property in the 1970s.

Assistant City Attorney Herrington discussed what to consider in determining whether a project is categorically exempt under CEQA. He explained that for the Commission to determine that a project does not fall under the categorical exemption of a single-family residence, it must find a feature or unusual circumstance of the site that distinguishes it from other projects in the exempt class and determine that there is a reasonable possibility of a significant impact resulting from the unusual circumstance. He also explained the type of evidence the Commission could look to when making this determination, including, whether properties with similar site conditions have been previously approved by the Commission under the same categorical exemption and whether the proposed project requires a variance.

The Commissioners discussed their views on whether the application should be subject to CEQA review and agreed that there was no evidence that the site conditions are significantly different than the site conditions of projects deemed categorically exempt from CEQA review. The Commission expressed confidence that the City Engineer and Building Official will carefully review all excavation plans for the project. The Commissioners unanimously supported the design of the project, stating that it would be an attractive addition to the neighborhood and that it is successful in preserving neighboring views. The Commissioners noted that, as requested, they visited the property at 145 Lexford Road and found no evidence that the proposed house would block the neighbor's view or light. Commissioner Chase noted the project meets the design review criteria, and objections mentioned by neighbors were construction related.

Resolution 129-NH DR-15

WHEREAS, the Property Owner is requesting permission to construct a new, approximately 4,437-square-foot, single-family residence on an existing vacant lot in Zone A. The new residence is proposed to be four levels with three bedrooms, two bathrooms, a half bath, a living room, dining room, kitchen, family room, office, laundry room, elevator, conforming two-car garage. A front terrace is proposed at the upper level and patios are proposed at the rear of the house. A landscape plan with retaining walls, stairs, walkways and exterior lighting is proposed, located at 139 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 Section 15303, (a), making the following findings:

1. There is no cumulative impact because the application proposes a single house on the lot and there is no reasonable probability of a significant effect on the environment;
2. The current application proposes a structure sited lower on the lot, with the majority of proposed excavation occurring on the lower portion of this lot. The amount of excavation has been reduced to 1,350 cubic yards from a previous proposal of 2,000 cubic yards that was not approved by the City Council;
3. Submitted geotechnical evidence indicates that the proposed lot has a rock base;
4. Geotechnical, soils and structural engineers will be involved in the development/construction process and there is no evidence that there will be a significant effect on the environment;
5. Based upon the submittals from the applicant's geotechnical expert, the site appears feasible for development, and that based on available data, there are no indications of Geotechnical hazards that would preclude the use of the site for development;
6. The project does not require the City to grant a variance. All features comply with the requirements set forth in the City's municipal code, which demonstrates that this project is not unique as compared to some other properties in the City, and that the underlying lot does not present any unusual physical characteristics that prevent the strict application of the City Code;
7. Among other Bay Area and Piedmont single-family developments, the City has previously approved numerous developments involving significant amounts of excavation, earth movement and retaining walls under a categorical exemption without an EIR including:
 - seven new single-family houses on steep vacant lots (53 Cambrian Avenue, 74 Huntleigh Road, 1 Maxwellton Road, 3 Maxwellton Road, 151 Maxwellton Road, 155 Maxwellton Road, and 14 Littlewood Drive);
 - seven projects involving the removal of all or a significant portion of an existing residence to be replaced by a new residence (62 Glen Alpine, 419 Hillside Court, 330 La Salle Avenue, 198 Maxwellton Road, 201 Park Way, 74 Sandringham Avenue, 505 Scenic Avenue);
 - ten projects with renovations to an existing residence or site (1454 and 1456 Grand Avenue, 218 Greenbank Avenue, 137 Greenbank Avenue, 212 Lafayette Avenue, 11 Muir Avenue, 77 and 79 Oakmont Avenue, 120 Requa Road, 213 Sunnyside Avenue); and
8. There is no substantial evidence that any exception to the Class 3 Categorical Exemption applies to this project, specifically including the unusual circumstances exception.

WHEREAS, with regard to design review, the Piedmont Planning Commission finds that the new house 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 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 the decks and lower level roofs and staircases are appropriate.
2. The proposed addition has been designed in a way that reasonably minimizes view and light impacts on neighboring properties, because the structure has been designed to be nestled into the hillside to minimize view and light impacts on neighboring properties.
3. The size and height of the addition is commensurate with the size of the lot (excluding the portions of the lot that cannot reasonably be built on), and is in keeping with the existing neighborhood development pattern, because it has been designed to have a street-accessible driveway and has a unique architectural style that is in keeping with the neighborhood. The proposed house is similar in size to other houses in the neighborhood and is substantially below the maximum allowable floor area 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. The existing or proposed on-site parking is appropriate to the size of the new addition, and additional parking is not required to prevent unreasonable short and/or long term parking impacts on the neighborhood, because the proposed house has a code-compliant garage that is easily accessible and usable.
5. The project complies with Design Review Guidelines I-1(a), I-2(a), I-2(b), I-2(c), I-2(d), I-5, I-5(a), I-5(b), I-6, I-7, I-9, I-9(a), III-1, III-1(a), III-2, III-2(a), III-3, III-4, III-5, III-5(a), III-6, III-6(a), III-7, III-7(a), IV-1, IV-1(a), IV-1(b), IV-2, IV-2(a), IV-3, IV-3(a), IV-5, IV-6, V-1, V-2, V-4, V-5, V-6, V-9.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review application for a new house at 139 Lexford Road, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

1. **Foundation/Shoring/Excavation Plan [1].** The Property Owner shall submit grading, 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. The plans shall include the signature of the geotechnical engineer stating that they have reviewed the proposed plans and they find them in conformance with the recommendations of the various geotechnical reports for this project.

a. 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, 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.

2. Neighboring Property Inspection [2]. Should the neighboring property owner provide consent, a licensed civil or structural engineer (chosen by the City, and paid for by the Property Owner) shall inspect neighboring homes and retaining walls at 135 Lexford Road, 140 Lexford Road, 145 Lexford Road, 77 Huntleigh Road, 87 Huntleigh Road, 130 Somerset Road, 140 Somerset Road, 160 Somerset Road, & 170 Somerset Road with the intent of establishing base-line information to later be used in determining whether damage was caused by any activities on Property Owner's property (including damage caused by vibrations or other factors due to excavation, construction or related activities). The inspection shall include both foundations and non-foundation related details (walls, windows, general overall condition, etc.) at a level of inspection City Staff deems appropriate. The inspection shall only include readily visible and accessible areas of the neighboring homes. The licensed civil or structural engineer shall provide a full report to the City of his or her conclusions, and the report may be considered in developing the Construction Management Plan. If other independent consultants or specialists are required by the City to review plans and monitor construction activity, they shall be retained at the Property Owner's cost. Before a neighbor agrees to an inspection, City will advise neighbors that the property inspection is necessarily a public record under the California Public Records Act.

Within 45 days after the Certificate of Occupancy is issued on Property Owner's property, the same licensed civil or structural engineer chosen by the City (or a substitute licensed civil or structural engineer chosen by the City) shall inspect the same area in each neighboring home and property initially inspected, and shall present to the City a Report detailing any evidence of apparent damage that has been or reasonably might have been caused by activities on the Property Owner's property. The Report may include text, photographs, diagrams, or other evidence that would document the apparent damage. The Report will become a public record and may be used in connection with private causes of action.

3. Geotechnical Report and Review [3]. The Property Owner shall submit a report prepared by a geotechnical engineer of the Property Owner's choice that fully assesses the existing site conditions, and addresses all issues regarding excavation and grading, foundations and their construction, drainage, retaining wall systems, periodic on-site observations, and other related items involving the Project.

a. Peer Review. The City, at the Property Owner's sole expense, shall retain an independent geotechnical consultant to perform a peer-review of the Property Owner's geotechnical report and advise the City in connection with the Property Owner's proposals. The City Engineer shall select this independent geotechnical consultant, whose services shall be provided for the sole benefit of the City and whose reports and

recommendations can be relied upon only by the City. The independent geotechnical consultant shall also review the building plans during the permit approval process, and may provide periodic on-site observations during excavation and construction of the foundations as deemed necessary by the City Engineer. The Property Owner shall provide payment for this at the time of the Building Permit submittal.

4. Construction Management Plan [4]. 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 plan shall specify the sequencing of grading, excavation, shoring, foundation and construction activities. 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 [8]. 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. Prior to the issuance of a building permit, the Applicant shall submit a construction stormwater management plan prepared by a licensed Civil Engineer to achieve timely and defective 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 must 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. Continual Street Access for Emergency Vehicles. The Construction Management Plan shall specifically address methods of providing continual street access for emergency vehicles at all times, which shall be subject to review and approval by the Fire Chief.

c. Haul routes shall be provided to the City for review and approval. To the extent possible, haul routes shall attempt to minimize or eliminate use of minor residential roadways. Street and pavement conditions shall be observed and documented by the City on all haul routes prior to commencement of construction.

5. Site Safety Security [5]. The City and the public have an interest in not having an unfinished project blighting the neighborhood and undermining property values. These public interests are primarily safety and aesthetics, and diminishment of property values. Prior to the issuance of a Building Permit, the Property Owner shall provide a specific cash deposit, letter of credit, bank guarantee, or other similar financial vehicle (“Site Safety Security”) in the amount of \$50,000 to ensure that the Project site is not left in a dangerous or unfinished state.

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

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

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

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

6. City Facilities Security [6]. 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 \$350,000 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.

7. Neighboring Property Damage Security [7]. The Applicant shall provide adequate and appropriate Insurance or bonds, as approved by the Director of Public Works and City Attorney against damage to neighboring properties at 135 Lexford Road, 140 Lexford Road, 145 Lexford Road, 77 Huntleigh Road, 87 Huntleigh Road, 130 Somerset Road, 140 Somerset Road, 160 Somerset Road, & 170 Somerset Road, by any construction, excavation, and related work in any way involving the project, such insurance or bonds to be in the amount of \$3,000,000.00 and with any conditions established by the Director of Public Works after consultation with the Applicant. If the Director of Public Works determines that obtaining any particular insurance would be extremely difficult for Applicant due to its lack of availability even at an increased cost, the Director of Public Works may authorize an alternative method of providing equal protection to neighboring properties, including but not limited to partial coverage by Umbrella Insurance if that appears appropriate. Such insurance or any alternative method shall allow for claims to be made for up to one year after the issuance of the Certificate of Occupancy on Applicant's project. Any and all such insurance or any alternative method shall specifically indicate that it covers damages to the above properties, and if such insurance is meant to also cover other potential damages, such as personal injuries or damages to other than the above named properties, any such further coverage shall be in addition to the \$3,000,000 earmarked for neighboring properties.

8. Contractor's General Liability Insurance [7]. 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.

9. **Subsidence [9].** The Property Owner acknowledges and agrees that all work on the Project may be immediately stopped by the City in the event of any unanticipated landslides, subsidence, creep, erosion or other geologic instability, and may not resume until the City Engineer is fully assured that no further subsidence or erosion will occur. If in the opinion of the City Engineer, the instability poses a danger to public or private property, and Property Owner is not responding in a diligent manner, the Director of Public Works may use proceeds from the Site Safety Security required above to address the instability.

10. **Construction Completion Schedule [11].** 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 and Shoring;
- ii. Completion of Retaining Walls;
- iii. Completion of Foundation;
- iv. Completion of Rough Framing;
- v. Completion of Electrical;
- vi. Completion of Plumbing;
- vii. Completion of Mechanical;
- viii. Completion of Fire Sprinklers;
- ix. Completion of Home;
- x. Completion of Hardscaping and Landscaping; and
- xi. any further construction benchmarks and conditions of occupancy as may be determined by the Director of Public Works.

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

c. If the work for any specific benchmark has not been completed within 90 days after the completion date set forth in the

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

11. Sound and Vibration Mitigation Plan and Review [12]. As required by the Director of Public Works, the Property Owner shall submit a plan prepared by a licensed engineer of the Property Owner's choice that fully assesses the existing site conditions for the mitigation and monitoring of vibration and decibel levels at the Project during construction (including being periodically present at the construction site during excavation and foundation work). If, in the Engineer's sole discretion, such monitoring indicates that the sound or vibration levels exceed those anticipated in the Property Owner's Construction Management Plan and/or the Sound and Vibration Mitigation Plan, all work on the Project may be immediately stopped by the City and may not resume until the City Engineer is fully assured that the sound and vibration transmissions generated by work on the Project can be maintained at or below a reasonable level and duration.

a. Peer Review. The City, at the Property Owner's sole expense, shall retain an independent engineering consultant to perform a peer-review of the Property Owner's Sound and Vibration Mitigation Plan and advise the City in connection with the Property Owner's proposals. The City Engineer shall select this independent engineering 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 engineering consultant shall also review the building plans during the permit approval process, and may provide periodic on-site observations during excavation and construction as deemed necessary by the City Engineer. The Property Owner shall provide payment for this at the time of the Building Permit submittal.

12. Modifications to Conditions [13]. 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.

13. Dedication of Funds [14]. All funds or financial vehicles set forth in any of the above conditions shall be earmarked or dedicated so that they are not subject to creditors claims.

14. City Attorney Cost Recovery [15]. 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.

15. Consultant Cost Recovery [16]. 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 \$10,000 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.

16. Errors and Omissions Insurance [17]. Notwithstanding any other condition hereof, any Project Architect, Structural Engineer, Civil Engineer, Geotechnical Engineer or Shoring Engineer to be retained by the Applicant to perform work relating to project on Applicant's property shall be required to maintain errors and omissions insurance coverage with limits of no less than \$1,000,000.00 per claim that will specifically be available to cover any errors and/or omissions relating to any work performed by that professional involving Applicant's property, and the City of Piedmont shall be named as an additional insured on such insurance coverage.

17. Approved Plan Set. The approved plans are those submitted on April 9, 2015, with additional information submitted June 10th, June 16th, and July 2nd, 2015, after notices to neighbors were mailed and the application was available for public review.

18. 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.

19. 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.

20. 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 southeastern property line adjacent to 145 Lexford Road and the northern property line adjacent to 130 and 140 Somerset Road 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).

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

22. **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.

23. **California's Water Efficient Landscape Ordinance:** Unless exempt, the property Owner shall comply with the requirements of California's Model Water Efficient Landscape Ordinance in effect at the time of building permit submittal, by submitting the following required information to the Building Department:

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

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

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

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

(The form for the Landscape Document Package and a Frequently Asked Question document on the CA-WELO requirements is available at the Public Works Counter and on the City website at www.ci.piedmont.ca.us).

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

25. **Blasting.** No blasting shall be allowed for any rock removal on this project.

26. **Sidewalk.** The applicant shall be responsible for installation of sidewalk fronting the entire project. Sidewalk construction shall be per City standards.

27. **Driveway.** The applicant shall be responsible for installation of a driveway for the property. The portion of the driveway within City right-of-way shall be constructed per City Standards.

28. **Right-of-Way.** Any work within the City's right-of-way will require obtaining an encroachment permit prior to commencement of work.

29. **Elevator Tower.** The elevator tower shall be provided with additional faux windows, recesses, decorative vents, or other elaborations that break up the massing of the tower and provide visual interest. Said modifications shall be subject to staff review and approval.

Moved by Chase, Seconded by Behrens

Ayes: Behrens, Chase, Ode

Noes: None

Recused: None

Absent: Theophilos, Zhang

The Commission recessed for dinner at 6:35 p.m. and reconvened at 7:10 p.m.

**Design Review
256 Wildwood Avenue**

The Property Owner is requesting permission to make various modifications at the rear of the property, including to remodel an existing upper level addition; remodel an existing upper level deck; construct a new lower level addition; and make modifications to windows and doors throughout the house.

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

Public testimony was received from:

Dan Hano, Project Architect, described the project and explained that the new addition and deck will be more consistent with the design of the original house. In response to questions from the Commission, Mr. Hano explained that the existing driveway is extremely narrow and unsafe, that it cannot be expanded due to the location of the property line and existing house, and that it is proposed to remain as is. Mr. Hano also answered questions about the proposed spiral staircase and the proposed French doors.

The Commission was unanimously in support of the application, stating that the proposed addition and deck was an improvement over the existing addition and deck.

Resolution 276-DR-15

WHEREAS, the Property Owner is requesting permission to make various modifications at the rear of the property, including to remodel an existing upper level addition; remodel an existing upper level deck; construct a new lower level addition; and make modifications to windows and doors throughout the house,

located at 256 Wildwood Avenue, Piedmont, California, which construction requires design review; and

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

1. The exterior design elements are aesthetically pleasing as a whole and harmonious with existing and proposed neighborhood development. The distance between the addition and adjacent residences is reasonable and appropriate due to the existing topography and neighborhood development pattern. Upper level setbacks greater than the setbacks required for the lower level have been considered and are not necessary to reduce losses of ambient and reflected light. The proposed redesign is an improvement over the existing design and is harmonious with the neighborhood.
2. The remodel has been designed in a way that reasonably minimizes view and light impacts on neighboring properties, because the new addition is in the same location as the existing addition and is only slightly higher than the existing addition.
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 many neighboring houses are built on narrow lots.
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 remodeling, and additional parking is not required to prevent unreasonable short and/or long term parking impacts on the neighborhood, because there is no change to the existing parking and no increase in the number of bedrooms on the property.
5. The project complies with Design Review Guidelines II-1, II-2, II-3(a), II-3(b), II-3(c), II-3(d), II-5, II-5(a), 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 256 Wildwood 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 fiberglass with a wood trim and sill.
2. **Window Color Scheme.** All the windows on the house shall have a consistent color scheme.

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. **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.

5. **Door Design.** The new French doors on the east facade of the house at the Recreation Room on the basement level shall be modified so that it is not necessary to have a landing in the driveway that would impede vehicular access to the garage subject to Staff review and approval.

6. **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.

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

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

9. **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 west 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).

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.

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

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

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

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

c. If the work for any specific benchmark has not been completed within 90 days after the completion date set forth in the Approved Schedule, and the delay in completion has not been caused by force majeure, the Director of Public Works has the option at any

time thereafter to make a claim against the Property Owner's Site Security, if one is required, in order to complete the benchmark. The Director of Public Works has the option to refer the application to the Planning Commission for public review.

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

**New House
Design Review
206 Crocker Avenue**

The Property Owner is requesting permission to demolish the existing house, pool, and other site features, and construct a new, 1,895-square-foot, two-story, two-bedroom house with a two-car garage at the lower level, and make site changes including alterations to the grading, new short and tall retaining walls, and new exterior lighting. A comprehensive landscape plan has been submitted, and Fence Design Review is required for alterations to the existing wall at the front of the property.

Written notice was provided to neighbors. **One affirmative response form and one response form indicating no position** were received. **Correspondence** was received from: Robert Davis and John Chiang.

Public testimony was received from:

Dr. Katie Rodan, Property Owner of both 200 Crocker Avenue and 206 Crocker Avenue, described the application. She explained that the new house at 206 Crocker Avenue is in keeping with the historic Julia Morgan house at 200 Crocker Avenue, and that a large shared yard is proposed between the properties. She added that the project is completely code-compliant and considerate of the adjacent neighbor's privacy and access to light.

Stephen Sooter, Project Architect, explained that the intent of the project is to rejoin the two properties, create a large yard, and construct a new house that incorporates the architectural features of the main house at 200 Crocker Avenue. He explained the siting of the new house and how it relates to the adjacent house at 210 Crocker Avenue. He described numerous proposed architectural details, and outlined the changes to the grade that are proposed as part of the landscape plan. Mr. Sooter presented a drawing showing an alternative wall treatment that would provide additional architectural interest for the south wall of the new house, and he expressed willingness to add architectural detailing where necessary to break up the massing of the new house.

In response to questions from the Commission, Dr. Rodan and Mr. Sooter both expressed willingness to remove the portion of the proposed fence that is directly adjacent to the neighbor's porte cochere. Mr. Sooter also agreed to increase the spacing of the proposed hedge in this area. Dr. Rodan and Mr. Sooter both discussed the options for the roofing material of the new house and the main house, and indicated that they would like the roof of the new house and the main house to match. Mr. Sooter expressed reluctance to move or rotate the house, because it would impact the proposed garden and further impact the privacy of the neighbor at 210 Crocker Avenue.

Robert Davis, neighbor at 210 Crocker Avenue, discussed the architectural importance of both his home and the house at 200 Crocker Avenue. He

expressed concern that the new house at 206 Crocker Avenue would obstruct his light and views and would impact his privacy. He was in favor of removing the proposed fence directly adjacent to the porte cochere, but asked that it also be removed west of the porte cochere. He explained that the new house would be less obtrusive if it were relocated in a north/south orientation at the front or back of the property. He expressed support for the architectural detail that Mr. Sooter discussed. Mr. Davis also expressed his opinion that the three houses should all have tile roofs. In response to questions from the Commission, Mr. Davis further described the impacts that the project would have on his light, view and privacy.

The Commissioners commended Mr. Sooter for a well thought-out design that is in keeping with the architecture of the main house at 200 Crocker Avenue, and they were in favor of the additional wall articulation that was presented during the meeting by Mr. Sooter. However, they were concerned about the impact that the proposed house would have on the adjacent historic house at 210 Crocker Avenue. Commissioner Chase expressed concern that the adjacent house would experience a loss of light, views, and privacy. He discussed several design alternatives to lessen these impacts, including reorienting the structure, moving it further north, lowering its elevation, and limiting it to one story. He was in favor of a redesign that would lessen the impact while retaining the architectural integrity. Commissioner Behrens expressed some concern for the impacts that the new house had on the adjacent neighbor, but was not in favor of drastic design changes. Chair pro Tem Ode stated that she was not ready to approve the project as presented due to the impact on the adjacent neighbor, but expressed support for moving the proposed house further north and lowering it. In response to questions from the Commission, Mr. Sooter confirmed that the house could be lowered a couple of feet and still be at street level. The Commissioners were in support of eliminating the fence along the neighbor's porte cochere and discontinuing the wall to the west of it.

Resolution 277-NH DR-15

WHEREAS, the Property Owner is requesting permission to demolish the existing house, pool and other site features, and construct a new, 1,895-square foot, two-story, 2-bedroom house with a two-car garage at the lower level, and make site changes including alterations to the grading, new short and tall retaining walls, and new exterior lighting. A comprehensive landscape plan has been submitted, and Fence Design Review is required for alterations to the existing wall at the front of the property, located at 206 Crocker Avenue, Piedmont, California, which construction requires design review; and

WHEREAS, after reviewing the application, plans and any and all testimony and documentation submitted in connection with such application, and after having visited the subject property, the Piedmont Planning Commission finds that the currently proposed project does not comply with the criteria and standards of Section 17.20.9 of the Piedmont City Code:

1. Although, the exterior design elements are aesthetically pleasing as a whole and harmonious with existing and proposed neighborhood development, the distance between the new house and adjacent residences is unreasonable and inappropriate due to the existing topography and neighborhood development pattern and impact on neighbors.
2. The proposed addition has been designed in such a way that unreasonably impacts the view and light of neighboring properties. Although the neighboring

house is not impacted by shade from the proposed house, it is impacted by a loss of light coming from above the roof of 200 Crocker Avenue.

3. The size and height of the new house is commensurate with the size of the lot, but its siting is not appropriate.

4. The safety of residents, pedestrians, and vehicle occupants and the free flow of vehicular traffic are not adversely affected under this proposal. The existing or proposed on-site parking is appropriate to the size of the new house, and additional parking is not required to prevent unreasonable short and/or long term parking impacts on the neighborhood, because it has the required number of off-street parking spaces with very straightforward access.

5. The project does not comply with Design Review Guidelines I-2(d) and I-7.

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

Ayes: Behrens, Chase, Ode

Noes: None

Recused: None

Absent: Theophilos, Zhang

**Variance and
Design Review
570 Scenic Avenue**

The Property Owner is seeking retroactive approval for various hardscape and site structure modifications including a new deck, patio, stairs, and lattice cladding over the existing retaining wall in the rear (west) yard and a new landing structure, stairs, and handrails in the side (north and south) yards. The applicant also requests Design Review to modify the design of the fence enclosing the southwest corner of the rear yard patio and abutting the property of 153 Bell Avenue. Three variances are required for exceeding the structure coverage and hardscape surface coverage limits of the lot, and for constructing within the right (north) side yard setback.

Written notice was provided to neighbors. **One affirmative response form** was received. **Correspondence** was received from: Cynthia Karasik.

Public testimony was received from:

Sam Katzen, Project Developer, explained that the goal of the project was to make the outdoor space more usable. He stated that he did not realize that the work required design review until after it was constructed. Mr. Katzen also explained the need for the variances and described the lattice that has been applied to the wall. In response to a question from Commissioner Behrens, Mr. Katzen confirmed that the fence will not be extended beyond the proposed location.

The Commission expressed regret that the application required retroactive approval, but was supportive of the design and variances. Commissioner Chase argued that the property is significantly smaller than the other properties in the neighborhood, and that the variances are justified, so that the applicant has the same design flexibility as others in the neighborhood. The Commissioners agreed that the project improves the property and makes it more usable. Chair pro Tem Ode expressed her opinion that the applicant could remove the stone

paved patio to reduce the need for an impervious surface variance, but ultimately agreed that the variances are justified and that the proposed design is approvable.

Resolution 278-V/DR-15

WHEREAS, the Property Owner is seeking retroactive approval for various hardscape and site structure modifications including a new deck, patio, stairs, and lattice cladding over the existing retaining wall in the rear (west) yard and a new landing structure, stairs, and handrails in the side (north and south) yards. The applicant also requests Design Review to modify the design of the fence enclosing the southwest corner of the rear yard patio (and abutting the property of 153 Bell Avenue), located at 570 Scenic Avenue, Piedmont, California, which construction requires design review; and

WHEREAS, three variances from the requirements of Chapter 17 of the Piedmont City Code are necessary to exceed the structure coverage and hardscape surface coverage limits of the lot, and for constructing within the right (north) side yard setback; and

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

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

1. The underlying lot and existing improvements present unusual physical circumstances, including but not limited to: the very small size of the property, especially in relation to other properties in the neighborhood, and the insignificance of the changes. Strictly applying the terms of this chapter would keep the property from being used in the same manner as other properties in the zone that conform to the zoning requirements.
2. The variance is compatible with the immediately surrounding neighborhood and the public welfare, because the project makes the property more compatible with the neighboring properties.
3. Accomplishing the improvements without variance would cause unreasonable hardship in planning, design, or construction, because the improvements would otherwise not be possible, given the small size of 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 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 some of the existing hardscape has been covered to improve the appearance of the property. Additionally, the proposed materials are of good quality.

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 impact.

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

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 570 Scenic 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. **Setback from Property Line Verification.** The applicant shall submit to the Building Official written verification by a licensed land surveyor stating that the construction of the new landing structure located at the setback dimension from the north 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.

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

ADJOURNMENT

There being no further business, Chair pro Tem Ode adjourned the meeting at 9:20 p.m.