

PIEDMONT PLANNING COMMISSION

Regular Meeting Minutes for Monday, December 12, 2016

A Regular Session of the Piedmont Planning Commission was held December 12, 2016, in the City Hall Council Chambers at 120 Vista Avenue. In accordance with Government Code Section 54954.2(a) the agenda for this meeting was posted for public inspection on November 28, 2016.

CALL TO ORDER

Chairman Behrens called the meeting to order at 5:00 p.m.

ROLL CALL

Present: Commissioners Eric Behrens, Susan Ode, Tom Ramsey (arrived at 5:04 p.m.), Tony Theophilos (left at 5:28 p.m.) and Tom Zhang

Absent: Alternate Commissioner Aradhana Jajodia (excused)

Staff: Planning Director Kevin Jackson, Senior Planner Pierce Macdonald-Powell, Associate Planner Jennifer Gavin, Assistant Planner Emily Alvarez, and Planning Technician Chris Yeager

PUBLIC FORUM

Kelsey So, student at Piedmont High School, introduced herself and noted that she and several other students were present to participate in the meeting.

Dimitri Magganas, Piedmont resident, reported that the construction and demolition industry was extremely busy before the November election, resulting in high prices, delays, and poor workmanship. He warned that, since the passing of local and regional facilities and infrastructure bonds on November 8, the construction industry would be even busier, making equipment scarce and prices higher. He argued that these issues would affect Piedmont Unified School District's pending construction, which should be of concern to all Piedmont residents.

REGULAR SESSION

The Commission considered the following items of regular business:

Approval of Minutes

Commissioner Ode suggested amending the November 14, 2016, meeting minutes to correct an error in the design review findings for 108 Moraga Avenue. She explained that finding #2 incorrectly references Code Section 17.2.77 in relation to the impact of light and views on neighboring properties, and that the correct reference is Section 17.2.79.

Resolution 33-PL-16

RESOLVED, that the Planning Commission approves its meeting minutes of the November 14, 2016, regular hearing of the Planning Commission, as amended by Commissioner Ode.

Moved by Theophilos, Seconded by Ramsey

Ayes: Behrens, Ode, Ramsey, Theophilos, Zhang

Noes: None

Recused: None

Absent: Jajodia

Resolution 34-PL-16

RESOLVED, that the Planning Commission approves as submitted its meeting minutes of the November 10, 2016, special meeting of the Planning Commission.

Moved by Zhang, Seconded by Theophilos

Ayes: Behrens, Ode, Theophilos, Zhang

Noes: None

Recused: Ramsey
Absent: Jajodia

Consent Calendar

The Commission placed the following applications on the Consent Calendar:

- 463 Jerome Avenue (Fence Design Review)
- 469 Jerome Avenue (Fence Design Review)

Resolution 35-PL-16

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

Moved by Ode, Seconded by Theophilos

Ayes: Behrens, Ode, Ramsey, Theophilos, Zhang

Noes: None

Recused: None

Absent: Jajodia

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

**Fence Design Review
463 Jerome Avenue**

Resolution 392-DR-16

WHEREAS, the Property Owner is requesting permission to install a 4-foot wooden gate and replace a fence within the front 20-foot setback in the front (north) and right (west) of the property, and to replace the fence in the rear (south) of the property, located at 463 Jerome Avenue, Piedmont, California, which construction requires design review; and

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

1. The exterior design elements are aesthetically pleasing as a whole and harmonious with existing and proposed neighborhood development, in that the design of the new fence is consistent with other fences in the neighborhood that are approximately 6 feet in height and have a similar board-on-board construction. The new fence, which is being constructed cooperatively with the neighbor, will be a significant improvement over the existing fencing.
2. The design is appropriate, considering its effect on neighboring properties' existing views, privacy and access to direct and indirect light, because there is no impact. The new fence will have an upgraded appearance and a minimal increase in height along the property line between the Piedmont Public School property and the rear property lines of both 463 and 469 Jerome Avenue and the fence between 461 and 463 Jerome Avenue.
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 on ingress or egress, and the new fence will replace an existing fence.

4. The project complies with Design Review Guidelines V-1, V-2, V-3, V-5, V-5(a), V-5(b), V-6, V-7, 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 463 Jerome Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

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

2. **Fence Location.** 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 completely within the property at 463 Jerome Avenue. Alternatively, should the applicant come to an agreement with the property owners at 461 Jerome Avenue, 469 Jerome Avenue, and/or the Piedmont Unified School District a Fence Location Agreement with each adjoining property owner may be submitted in lieu of the survey.

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

**Fence Design Review
469 Jerome Avenue**

Resolution 393-DR-16

WHEREAS, the Property Owner is requesting permission to construct a wood fence in the 20-foot street side setback along El Cerrito Avenue on the left (east) and rear (south) boundaries of the property, located at 469 Jerome Avenue, Piedmont, California, which construction requires design review; and

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

1. The exterior design elements are aesthetically pleasing as a whole and harmonious with existing and proposed neighborhood development, in that the design of the new fence is consistent with other fences in the neighborhood that are approximately 6 feet in height and have a similar board-on-board construction. The new fence, which is being constructed cooperatively with the neighbor, will be a significant improvement over the existing fencing.

2. The design is appropriate, considering its effect on neighboring properties' existing views, privacy and access to direct and indirect light, because there is

no impact. The new fence will have an upgraded appearance and a minimal increase in height along the property line between the Piedmont Public School property and the rear property lines of both 463 and 469 Jerome Avenue and the fence between 461 and 463 Jerome Avenue.

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 on ingress or egress, and the new fence will replace an existing fence.

4. The project complies with Design Review Guidelines V-1, V-2, V-3, V-5, V-5(a), V-5(b), V-6, V-7, 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 469 Jerome Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

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

2. Fence Location. 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 completely within the property at 469 Jerome Avenue. Alternatively, should the applicant come to an agreement with the property owners at 463 Jerome Avenue and/or the Piedmont Unified School District a Fence Location Agreement with each adjoining property owner may be submitted in lieu of the survey.

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

Regular Calendar

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

**Variance and
Design Review
1144 Oakland Avenue**

The Property Owner is requesting permission to make several modifications throughout the property including: to raise the existing house by 2 feet and develop approximately 1,153 square feet of habitable space, including an approximately 101-square-foot, one-story addition at the back left (east) corner of the house with a balcony atop and to develop approximately 1,052 square feet at the basement level; to remove the existing entryway stair and reorient the location of the front door to the front of the first floor; to expand the size of the existing attached garage and driveway; to make various modifications to retaining walls, fences, and hardscape throughout the property; and to make modifications to windows, skylights, and doors throughout the house. Two

variances are required in order to construct within the left (east) setback and the front (north) setback.

Written notice was provided to neighbors. **Three affirmative response forms** were received. **Correspondence** was received from: Ellen Reed and Bill Guy.

Public testimony was received from:

Eileen Liu spoke on behalf of her parents, the owners of 1144 Oakland Avenue. She thanked the Commissioners for their previous comments and noted that her parents worked with the designer and neighbors to improve the design of the project. She explained that the existing house is in disrepair and that her family is looking forward to renovating it.

The Commissioners were in full support of the project. They commended the applicants for listening to their comments and working with their neighbors to create an approvable project. Commissioner Theophilos noted that neighbors who were previously opposed to the project are now fully in support of it.

Resolution 374-V/DR-16

WHEREAS, the Property Owner is requesting permission to make several modifications throughout the property including: to raise the existing house by 2 feet and develop approximately 1,153 square feet of habitable space, including an approximately 101-square-foot, one-story addition at the back left (east) corner of the house with a balcony atop and to develop approximately 1,052 square feet at the basement level; to remove the existing entryway stair and reorient the location of the front door to the front of the first floor; to expand the size of the existing attached garage and driveway; to make various modifications to retaining walls, fences, and hardscape throughout the property; and to make modifications to windows, skylights, and doors throughout the house, located at 1144 Oakland Avenue, Piedmont, California, which construction requires design review; and

WHEREAS, two variances from the requirements of Chapter 17 of the Piedmont City Code are necessary to construct within the left (east) setback and the front (north) 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 CEQA Guidelines Section 15301, Class 1(e); and

WHEREAS, regarding 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, because the existing house is non-conforming with both the left side yard and front yard setbacks. The proposed front yard setback will be increased with the removal of the front stairs. The left side yard will be the same as existing.

2. The variance is compatible with the immediately surrounding neighborhood and the public welfare, because it is common for houses in this neighborhood to

have a small setback. Without a variance, the house cannot be raised and used in the same manner as others in the area. The variance will not give the owner an advantage over others, because the setback actually increases in the front.

3. Accomplishing the improvements without variance would cause unreasonable hardship in planning, design, or construction, because the house cannot be raised to convert the basement into liveable space without the variances. Adding a story on top of the existing house would cause significant negative impact to the adjacent neighbors and would also probably require variances.

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

1. The exterior design elements are aesthetically pleasing as a whole and harmonious with existing and proposed neighborhood development. These elements include but are not limited to: height, bulk, area openings, breaks in the façade, line and pitch of the roof, materials, arrangements of structures on the parcel, and concealment of mechanical and electrical equipment. The distance between the proposed upper level and adjacent residences is reasonable and appropriate due to the existing topography and neighborhood development pattern. The house will be raised, and its main structure and roof, with its attractive design, will remain unchanged. The front stairs will be removed and the entrance porch will be located on the ground floor. All windows will be upgraded to aluminum clad wood windows with articulation to match existing. The existing metal ornament will be retained and placed above the garage door. The cantilevered eave and course belt will be extended to the rear portion of the house to make it a seamless addition. No exposed mechanical and electrical equipment are proposed.

2. The proposed upper level expansion has been designed in a way that reasonably minimizes view and light impacts on neighboring properties, including consideration of the location of the new construction, lowering the height of the addition, expansions within the existing building envelope, lower level excavation for new multi-level structures, and retaining the roof slope and ridge direction. The structural expansion of the upper level is limited to a shallow balcony above the kitchen extension on the ground level. The balcony will be surrounded by planters, and a privacy screen will be installed to provide privacy protection for the neighbors. A sight line and window placement study was conducted to ensure that the design minimizes any light or view impacts.

3. The size and height of the addition are commensurate with the size of the lot and are in keeping with the existing neighborhood development pattern, because the proposed height of the house is 20 feet, which is 15 feet lower than the maximum height allowed in the code and is similar to the height of other two-story houses in the neighborhood.

4. The safety of residents, pedestrians, and vehicle occupants and the free flow of vehicular traffic are not adversely affected, considering the circulation pattern, parking layout and points of ingress and egress. The proposed garage is enlarged to provide one more off street parking space. The circulation pattern has not changed.

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

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the variance and design review application for proposed construction at 1144 Oakland Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

1. **Contractor's General Liability Insurance.** To ensure that the contractor doing work in the City will be responsible for damages caused by the work to City property or to neighboring property, the Property Owner shall require all contractors performing work on the Project to maintain General Liability Insurance for protection from claims for damages because of bodily injury, including death, and claims for damages, other than to the contractor's work itself, to property which may arise out of or result from the contractor's operations. Such insurance shall be written for not less than \$1,000,000 per occurrence. The insurance shall include an endorsement requiring 10 days prior notice to the City if the insurance is to be cancelled or changed, and Property Owner shall immediately arrange for substitute insurance coverage. If the contractor's insurance carrier states in writing that it is unable to provide the required endorsement, Property Owner shall be responsible for providing the City with the required notice if the insurance is to be cancelled or changed. Property Owner's failure to provide such notice shall constitute grounds for revocation of the City's design review approval and/or permit. If the Property Owner does not have a general contractor, the Property Owner shall maintain property insurance and coverage for contractors, which is substantially equivalent to the contractor's requirement of this section.

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

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

4. **Skylight Flashing.** The metal flashing around the new skylights shall be painted to match the adjacent roof color.

5. **Privacy Screen.** Prior to final inspection, the Chief Building Official shall verify that the planted privacy screen at the upper level balcony has been planted as shown in the plans.

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

7. **Garage Door.** To facilitate vehicular access, the garage door shall be motorized. If design modifications are required to accomplish this, those modifications shall be subject to staff review.

8. **Setback from Property Line Verification.** Prior to foundation inspection, the applicant shall submit to the Building Official written

verification by a licensed land surveyor stating that the construction is located at the setback dimension from the east property line to the eave of the addition and west property line to the new fence 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. Any new fences must be constructed completely on the property at 1144 Oakland Avenue unless a Fence Location Agreement is signed by the property owners of 1144 Oakland Avenue and 1140 Oakland Avenue.

9. Building Height and Floor Level Verification. At the discretion of the Chief Building Official, 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.

10. 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.

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

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

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

- b. Neighboring Property Owner Permission. Should the execution of the Foundation/Shoring/Excavation Plan require excavation into a neighboring property or if access onto the neighboring property is necessary for construction, 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.

13. **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 as needed: 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 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 Ode, Seconded by Theophilos
Ayes: Behrens, Ode, Theophilos
Noes: None
Recused: Ramsey, Zhang
Absent: Jajodia

**Variance and
Design Review
89 Ronada Avenue**

The Property Owner is requesting permission to make modifications to a prior approval, including: to create an additional 150 square feet of habitable space within the basement and to make minor window changes on the front, left, and right facades. Two variances are required in order to exceed the floor area ratio

limit and to add an additional room eligible for use as a bedroom without supplying conforming parking.

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

Public testimony was received from:

Dave Herskowitz, homeowner, described the proposed modifications to the previously approved plans. He explained that minor window modifications are proposed to meet emergency egress requirements and to incorporate a small stained glass element. He described the other proposed changes to the previous approval, which include interior modifications that trigger the need for a floor area ratio variance and a parking variance. Mr. Herskowitz explained that his initial intent was to retain as much of the existing foundation as possible, but that during the development of construction and engineering drawings, the design team determined that the entire foundation would need to be replaced and that the basement could be excavated further with little added expense. He explained that the application proposes to enlarge the basement TV room and add a full bathroom. Mr. Herskowitz responded to several questions from the Commission. He indicated that his intent is to use the basement room as a TV room, not a bedroom. He noted that the current application asks for four bedrooms, which has the same parking requirement as the previously approved three bedrooms, and that his block of Ronada Avenue has adequate street parking. Mr. Herskowitz replied to questions from Commissioners Ramsey and Zhang about the use of and access to the area labeled “crawl space”, which he confirmed has a ceiling height equal to that of other portions of the basement. He also described the floor and wall finishes of the laundry room and crawl space.

Commissioner Ode asked staff for clarification on what defines a room as eligible for use as a bedroom, and Commissioner Ramsey asked staff for clarification on whether the crawl space would further impact the floor area ratio. Staff explained the building and planning codes related to bedroom count and habitable space and referred to past interpretations by the Commission. Assistant Planner Emily Alvarez noted that staff proposes a condition of approval to place a notice of non-habitation on the non-habitable spaces in the basement.

The Commissioners indicated initial concern for the addition of a bedroom and the potential shortage of street parking, but they were satisfied with the explanation and arguments presented by Mr. Herskowitz. Commissioners Ramsey and Ode maintained that the applicant’s intent has not changed and that the current proposal is within the spirit of the original approval. Commissioner Behrens noted that the neighbors support the project and that no concerns were raised over parking in the neighborhood. Commissioner Zhang stated that the basement excavation is logical and he found the exterior changes to be reasonable.

Resolution 394-V/DR-16

WHEREAS, the Property Owner is requesting permission to make modifications to a prior approval, including: to create an additional 150 square feet of habitable space within the basement and to make minor window changes on the front, left, and right facades, located at 89 Ronada 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 exceed the floor area ratio limit and to add an additional room eligible for use as a bedroom without supplying conforming parking; and

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

WHEREAS, regarding 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 lot size, the narrow side yard, and the historic character of the existing house; so that strictly applying the terms of this chapter would keep the property from being used in the same manner as other properties in the zone which conform to the zoning requirements.
2. The variance is compatible with the immediately surrounding neighborhood and the public welfare, because single-car garages are common in the neighborhood; the parking requirement for a three-bedroom house is the same as for a four-bedroom house; the modifications to the basement are to a TV room, which is the same intended use as in the original application; and the increase in floor area is within the existing footprint of the house.
3. Accomplishing the improvements without variance would cause unreasonable hardship in planning, design, or construction, because a conforming garage would be out of proportion with the historic home, other homes in the neighborhood have similar parking situations, and the floor area increase is within the existing envelope of the house and is consistent with other homes in the area.

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

1. The exterior design elements are aesthetically pleasing as a whole and harmonious with existing and proposed neighborhood development. These elements include, but are not limited to, the window modifications, which are minor and in keeping with the previously approved design.
2. The design is appropriate, considering its effect on neighboring properties' existing privacy and access to direct and indirect light, because this application proposes no changes that would impact neighboring properties.
3. The safety of residents, pedestrians, and vehicle occupants and the free flow of vehicular traffic are not adversely affected, considering the circulation pattern, parking layout and points of ingress and egress, because this application proposes no changes that would impact pedestrian or 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-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 89 Ronada Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

1. **Window Material.** As specified in the plans, the building material for the new windows shall be aluminum-clad wood.

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

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

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

5. **Notice of Restricted Use.** The basement rooms labeled "Storage/Mechanical", "Crawl Space", and "Laundry" do not meet habitation or safety requirements of the Piedmont Municipal Code. A notice of restricted use shall be recorded with the Alameda County Recorder's office advising current and future owners that the space does not meet the safety codes for habitation/sleeping purposes.

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

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

- a. The Construction Completion Schedule with associated construction values for each benchmark shall set forth completion dates for the following benchmarks as needed: 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 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 Ramsey, Seconded by Zhang
Ayes: Behrens, Ode, Ramsey, Zhang
Noes: None
Recused: None
Absent: Jajodia, Theophilos

**Variance and
Design Review
212 Bonita Avenue**

The Property Owner is requesting permission to modify a previously approved design to remodel and expand the residence by making changes to the following features: the exterior wall material; the main entry portico; the columns of the second story rear loggia; the stairs on the north side of the house; windows and doors; handrails; and exterior lighting. The application also proposes to enclose a basement level alcove at the rear of the house; make various interior changes including the development of habitable space at the basement level; and make various hardscape and landscape changes at the rear of the house, including a reconfigured vehicle turnaround area and new basement level terrace. Due to the lowering of grade at the rear of the house, a variance from the 35 foot building height limit is required.

Written notice was provided to neighbors. **Three affirmative response forms and one response form indicating no position** were received. **Correspondence** was received from: Alice Creason.

Public testimony was received from:

Ahmad Mohazab, project architect, stated that, since taking over the project design, his job has been to facilitate the completion of construction drawings and expedite the project. He described the proposed changes and discussed his efforts to engage the neighbors. He explained that the neighbor to the south

recently recommended greater articulation of the French doors and expressed concerns regarding the privacy impacts of the proposed loggia, which has a more open design than the previously approved loggia. Mr. Mohazab indicated that in response to these concerns, the applicant is proposing a new revision which gives the loggia a less open design and greater articulation on the French doors. He handed out drawings of this new revision to the Commission. He then responded to several questions from Commissioners. In response to concerns raised by Commissioner Ramsey regarding the proposed reduction in the width of the vehicular turnaround area, Mr. Mohazab agreed to work with staff to make design modifications to the planters, terrace, and/or stairs to preserve the width of the turnaround area. He added that he hopes to see an improved garage proposed in the future. Mr. Mohazab responded to concerns raised by Commissioner Behrens regarding the proposed shiplap siding, explaining that the existing shingle siding is harder to maintain and arguing that the proposed wood shiplap siding is in keeping with the variations in Piedmont architecture. In response to additional questions from the Commission, Mr. Mohazab clarified the relative height and intersection of the loggia and house eaves, commented on the design of the pilasters and columns of the loggia, confirmed that no habitable space is being added to the attic, and discussed the architectural style of the house.

Seamus Meagher, homeowner, commented on his preference for shiplap siding. He explained that paint is peeling from the existing shingle siding, and that it is hard to get paint to adhere well to shingles. He argued that shiplap siding is easier to maintain and has a stronger structure, and he referred to examples of shiplap siding within the neighborhood. In response to questions from Commissioner Behrens, Mr. Meagher acknowledged that changing the siding material would significantly change the look of the house, but argued that modern shingles would also change the look of the house. He noted that his neighbors are in support of the shiplap siding. In response to a question from Commissioner Zhang, Mr. Meagher stated that the two uncovered parking spaces referenced in the project application are tandem spaces along the existing driveway.

Alice Creason, neighbor at 408 Blair Avenue, expressed concern for the “piecemeal development” of the project and stated that her goal is to protect herself, her family, her property, her historic home, and the neighborhood. She proposed several conditions of approval, including: a condition requiring the erection of a temporary fence to protect her property from dust, debris and damage during construction; a condition requiring the protection of existing trees on the north side of the property; a change to the previously approved condition requiring neighboring property owner permission prior to any changes; a condition requiring Planning Commission review for any future changes to the plans; and a condition requiring double-paned glazing for all new and existing windows on the north and east sides of the house. Ms. Creason distributed a copy of her proposed conditions to the Commissioners. In response to Commissioner Ramsey’s comment that her proposed conditions have mostly been addressed by current and prior staff conditions of approval, Ms. Creason reiterated that she has proposed a change to the condition regarding neighboring property owner permission. She also stated that the applicant has violated many of the Planning Commission’s prior conditions of approval. Ms. Creason responded to Commissioner Zhang’s question about her proposed temporary fence.

Bing Mitchell, Piedmont resident, asked for clarification on Commissioner Ramsey's comments regarding the City's vehicular turnaround policy. Commissioners Ramsey and Behrens responded and explained the importance of the City policy. Mr. Mitchell also asked whether the proposed construction would obstruct the sidewalk for students walking to school. Planning Director Jackson stated that his question is best answered by the Building Department.

Tansy Robinson, a member of the design team, commented on the discussion about shingles and shiplap siding. She explained that shingle siding is traditionally not painted. She argued that since the shingles on this house have been painted for many years, a change to shiplap siding would be more in keeping with the existing house than would new, unpainted shingles. In response to a question from Commissioner Ramsey, Ms. Robinson explained that shingle siding is more common on a colonial house of this style, but that shiplap siding is also historically appropriate. She described the change to shiplap siding as subtle and not completely out of character with the house's architecture.

Following the above testimony, Mr. Mohazab spoke again to answer a question posed by Commissioner Zhang regarding parking on the property. He explained that placing a garage in the basement of the house is not feasible, due to the site topography. He reiterated that he would like to return with a proposal for an improved garage, and he promised to talk with neighbors ahead of time regarding any garage proposal. Mr. Mohazab also stated that the applicant is willing to install wood shingles, in place of the shiplap siding, if necessary.

The Commissioners were in support of many of the proposed modifications to the previous approval, but concerns were raised about specific aspects of the proposal, namely the proposed shiplap siding and the reduction in the vehicular turnaround area. While Commissioners Ode and Ramsey were initially supportive of either shingle or shiplap siding, Commissioners Behrens and Zhang expressed opposition to the proposed change from shingle to shiplap siding. Commissioner Behrens argued that shiplap siding is architecturally inconsistent with the existing house and the neighborhood. He cited Code Sections 17.1, 17.5.1, and 17.20.9 to support his argument that the shingle siding should be preserved. He was pleased that the applicant agreed to retain the shingles, and he suggested that the Commission add a condition of approval denying the shiplap siding.

The Commissioners unanimously expressed concern for the 6-foot 5-inch reduction in the width of the previously approved turnaround area. Commissioner Ramsey suggested that the applicant eliminate the proposed planter and/or modify or relocate the proposed stairs, so as not to reduce the width of the turnaround area. The Commissioners agreed that such modifications could be reviewed and approved by staff. Commissioner Zhang voiced his hope that the applicant would improve the parking in the future.

The Commissioners were in favor of the remaining proposed modifications, including the design changes to the loggia and the main-level French doors that were presented during the meeting. The Commissioners were also in favor of the variance, which Commissioner Zhang noted is necessary to meet emergency egress requirements. In response to Ms. Creason's concerns, Commissioner Ode suggested that the Commission require an arborist's report. They also discussed her request for a temporary fence. Commissioner Ramsey explained that site safety, dust control, and many of Ms. Creason's concerns are already addressed in the construction management plan. He warned the Commission of being

prescriptive by requiring a temporary fence and suggested that the Commission instead rely on the construction management plan, which is performance based. Commissioner Ramsey also noted that the project will still be subject to previously approved conditions, such as the condition regarding neighboring property owner permission. Commissioner Behrens indicated his opposition to Ms. Creason's suggested condition that the Planning Commission review all proposed modifications to the project, due to its unprecedented and overly burdensome nature.

Resolution 395-V/DR-16

WHEREAS, the Property Owner is requesting permission to modify a previously approved design to remodel and expand the residence by making changes to the following features: the exterior wall material; the main entry portico; the columns of the second story rear loggia; the stairs on the north side of the house; windows and doors; handrails; and exterior lighting. The application also proposes to enclose a basement level alcove at the rear of the house; make various interior changes including the development of habitable space at the basement level; and make various hardscape and landscape changes at the rear of the house, including a reconfigured vehicle turnaround area and new basement level terrace, located at 212 Bonita Avenue, Piedmont, California, which construction requires design review; and

WHEREAS, a variance from the building height requirement of Chapter 17 of the Piedmont City Code is necessary, due to the lowering of grade at the rear of the house; and

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

WHEREAS, regarding 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 existing basement was built with conforming head height, but nonconforming egress; so that strictly applying the terms of this chapter would keep the property from being used in the same manner as other properties in the zone which conform to the zoning requirements.
2. The variance is compatible with the immediately surrounding neighborhood and the public welfare, because the variance will allow basement access in a manner similar to other homes. This approach provides access with the least impact on the surrounding neighborhood, and does so without raising the house.
3. Accomplishing the improvements without variance would cause unreasonable hardship in planning, design, or construction, because existing grades at the house prevent access without excavation.

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

1. The exterior design elements are aesthetically pleasing as a whole and harmonious with existing and proposed neighborhood development. These elements include, but are not limited to: modifications to the entry portico design; modifications to the loggia column and wall design; addition of French doors; rebuilding of stairs on the north side of the house; modifications to windows, doors, handrails and lighting; enclosure of the basement-level alcove and development of habitable space in the basement; and interior modifications and landscape modifications to support these revisions. The exterior design elements are aesthetically pleasing, in that the classical design fits comfortably with the existing home, and the revised columns at the loggia and entry are of the same style. Per Code Sections 17.1, 17.5.1, and 17.20.9(a), the proposed shiplap siding is not in character with the neighborhood nor with the original architecture of the house.

2. The design is appropriate, considering its effect on neighboring properties' existing views, privacy and access to direct and indirect light, because the proposed loggia design (as submitted on December 12, 2016) is similar in style to the previously approved loggia design and responds to the neighbor's concerns regarding views and privacy.

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, as conditioned, there are no significant changes to the previously approved vehicular turnaround, and the design removes a basement-level point of egress onto the driveway at the north of the property where the home is closest to the adjacent property line.

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-6, II-6(a), II-6(b), II-6(c), II-7, II-7(a), IV-1, IV-3, IV-3(a), IV-6.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the variance and design review application for proposed construction at 212 Bonita Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

1. **Approved Construction Limited to Applicants' Property.** The features approved under the scope of this application must be located within the boundaries of the property at 212 Bonita Avenue and do not include any existing or proposed features located all or in part on adjacent properties.

2. **Approved Plan Set.** The approved plans are those submitted on November 22, 2016 with additional information submitted on November 28 and 30, and December 1, 2016, after notices to neighbors were mailed and the application was available for public review.

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

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

5. **Exterior Lighting.** All new exterior light fixtures shall be downward directed with an opaque or translucent shade that completely covers the light bulb. No spot or flood lights have been approved within the scope of this application.

6. **Contractor's General Liability Insurance.** To ensure that the contractor doing work in the City will be responsible for damages caused by the work to City property or to neighboring property, the Property Owner shall require all contractors performing work on the Project to maintain General Liability Insurance for protection from claims for damages because of bodily injury, including death, and claims for damages, other than to the contractor's work itself, to property which may arise out of or result from the contractor's operations. Such insurance shall be written for not less than \$1,000,000 per occurrence. The insurance shall include an endorsement requiring 10 days prior notice to the City if the insurance is to be cancelled or changed, and Property Owner shall immediately arrange for substitute insurance coverage. If the contractor's insurance carrier states in writing that it is unable to provide the required endorsement, Property Owner shall be responsible for providing the City with the required notice if the insurance is to be cancelled or changed. Property Owner's failure to provide such notice shall constitute grounds for revocation of the City's design review approval and/or permit. If the Property Owner does not have a general contractor, the Property Owner shall maintain property insurance and coverage for contractors, which is substantially equivalent to the contractor's requirement of this section.

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

8. **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.

9. **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.

10. **Building Height and Floor Level Verification.** Should the Building Official request it and prior to frame inspection, the applicant shall provide the Building Official written verification by a licensed land surveyor stating that the roof of the new addition is constructed at the approved height above grade.

11. **Notice of Restricted Use for the Attic Level.** The attic level does not meet habitation or safety requirements of the Piedmont Municipal Code. A notice of restricted use shall be recorded with the Alameda County Recorder's office advising current and future owners that the attic level does not meet the safety codes for habitation purposes.

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

- a. Construction Site Control of Stormwater. The California Regional Water Quality Control Board requires all projects that disturb the site to comply with Provision C.6 of the San Francisco Bay Regional Stormwater NPDES Permit in order to prevent construction site discharges of pollutants and other regulated materials during construction. As required by the Chief Building Official and prior to the issuance of a building permit, the Applicant shall develop and submit a construction stormwater management plan as part of the Construction Management Plan to achieve timely and effective compliance with Provision C.6. Permit Provision C.6.c.ii provides sources for site specific, and seasonally- and phase-appropriate, effective Best Management Practices (BMPs) that may be incorporated into the stormwater management plan. Copies of the Municipal Regional Stormwater Permit are available from the Piedmont Public Works Department and on-line at cleanwaterprogram.org.
- b. Renovation / New Construction. Pursuant to Section 17.32.6 of the Municipal Code, if for any reason more than 70% of the physical structure (as determined by the Building Official) is demolished or destroyed, the building shall conform to new building and planning Code requirements. If this occurs during demolition, all work must stop and a new hearing and public review by the Planning Commission is required.
- c. Neighboring Property Owner Permission. If access onto a 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.

13. 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 as needed: 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 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.

14. Loggia and French Doors. The approved design for the columns and enclosure of the upper level loggia and the south-facing main level French doors to the great room is that shown on the plans submitted by the applicant at the December 12, 2016, Planning Commission meeting, with details subject to staff review and approval.

15. Vehicle Turnaround. The vehicle turnaround to the rear of the house shall be widened so as to be more in conformance with the City’s Residential Parking and Driveways Policy. The modified design shall be subject to staff review and approval.

16. Arborist’s Report and Certified Tree Preservation Plan. Before the issuance of a building permit, the Property Owner shall submit an Arborist’s Report and Certified Tree Preservation Plan that includes tree preservation measures for the trees on the neighboring property at 408 Blair Avenue that are adjacent to the driveway along the north property line. The tree preservation measures shall be on the appropriate sheets of the construction plans. The arborist shall be on-site during critical construction activities, including initial and final grading, to ensure the protection of the existing trees. The arborist shall document in writing and with photographs the tree protection measures used during these critical construction phases. Before the Final Inspection, the Arborist shall file a report to the City certifying that all tree preservation measures as recommended have been implemented to his/her satisfaction and that all trees identified for protection have not been compromised by the construction.

17. Exterior Wall Material. The request to replace the exterior wall material, wood shingles, with shiplap siding is not approved within the scope of this application.

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

ADJOURNMENT

There being no further business, Chairman Behrens adjourned the meeting at 7:00 p.m.