

PIEDMONT PLANNING COMMISSION

Regular Meeting Minutes for Monday, December 11, 2017

A Regular Session of the Piedmont Planning Commission was held December 11, 2017, 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 27, 2017.

CALL TO ORDER

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

ROLL CALL

Present: Commissioners Aradhana Jajodia, Susan Ode, Tom Ramsey and Alternate Commissioner Clark Thiel

Absent: Commissioners Eric Behrens and Jonathan Levine (both excused)

Staff: Planning Director Kevin Jackson, Senior Planner Pierce Macdonald-Powell, Assistant Planners Chris Yeager and Mira Hahn, and Planning Technician Benjamin Davenport

Council Liaison: Councilmember Betsy Andersen

ANNOUNCEMENTS

On December 8, the Climate Action Plan Task Force considered the draft Climate Action Plan and requested minor revisions. Staff will prepare a revised Climate Action Plan for presentation to the Task Force on January 10, 2018.

PUBLIC FORUM

There were no speakers for the public forum.

REGULAR SESSION

The Commission considered the following items of regular business:

APPROVAL OF MINUTES

Resolution 29-PL-17

RESOLVED, that the Planning Commission approves as presented its meeting minutes of the November 13, 2017, regular hearing of the Planning Commission.

Moved by Ode, Seconded by Jajodia

Ayes: Jajodia, Ode, Ramsey

Noes: None

Recused: Thiel

Absent: Behrens, Levine

CONSENT CALENDAR

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

- 332 Pacific Avenue (Design Review Permit)
- 360 Hampton Road (Fence Design Review Permit)
- 209 San Carlos Avenue (Variance and Design Review Permit)
- 370 Highland Avenue (Conditional Use Permit)

Resolution 30-PL-17

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

Moved by Jajodia, Seconded by Thiel

Ayes: Jajodia, Ode, Ramsey, Thiel

Noes: None

Recused: None

Absent: Behrens, Levine

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

**Design Review Permit
332 Pacific Avenue**

Resolution 230-DR-17

WHEREAS, the Property Owner is requesting permission to construct an approximately 43-square-foot cantilevered addition to the first-floor roof deck in the rear (south) of the home; modify windows, doors and exterior lighting in the rear of the home; and modify guardrails on the rear roof decks, located at 332 Pacific Avenue, which construction requires a design review permit; 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), Existing Facilities, because the proposed project is a minor change to an existing private residence which is less than 50 percent of the floor area of the structure before the change, and the project is consistent with General Plan policies and programs, and that the proposal, as conditioned, conforms to the criteria and standards of Section 17.66.060 of the Piedmont City Code:

1. The proposed design is consistent with the City's General Plan and Piedmont Design Guidelines in that the following building features are consistent with the original architecture and neighborhood development, including the wall material, the window and door material and fenestration pattern, and the guardrail material and design.
2. The design has little or no effect on neighboring properties' existing views, privacy, and access to direct and indirect light because the distance between the project and neighboring homes is appropriate and the topographical differences are appropriate to preserve privacy, views, and light.
3. The proposed design does not adversely affect pedestrian or vehicular safety because the project has no effect on pedestrian and vehicular safety.
4. As conditioned, the application complies with the following guidelines: II-1, II-2, II-3, II 3(a), II-3(b), II-3(c), II-3(d), II-6, II-6(a), II-6(b), II-6(c), II-7, II-7(a) (*remodels*).
5. The project is consistent with General Plan policies and programs, including the land use element, housing element, and design and preservation element, including: Design and Preservation Element Policy 28.1 (Scale, Height, and Bulk Compatibility), Design and Preservation Element Policy 28.2 (Style Compatibility), Design and Preservation Element Policy 28.5 (Garages, Decks, and Porches), Design and Preservation Element Policy 28.6 (Exterior Materials), Design and Preservation Element Policy 31.4 (Restoration).

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review permit application for the proposed remodel at 332 Pacific 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 steel.

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

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

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

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

6. **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.

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

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.

8. **Construction Completion Schedule.** Work on the Project, once begun, shall be promptly executed with continuous good faith and reasonable progress. Since timely completion of this Project is of the essence, the Property Owner shall

submit for approval a Construction Completion Schedule, which will specify, in detail, the duration and percentage complete of each phase.

- a. The Construction Completion Schedule with associated construction values for each benchmark shall set forth completion dates for the following benchmarks 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 Jajodia, seconded by Ode

Ayes: Jajodia, Ode, Ramsey, Thiel

Noes: None

Recused: None

Absent: Behrens, Levine

**Fence Design Review
360 Hampton Road**

Resolution 355-FDR-17

WHEREAS, the Property Owner is requesting permission to install two wrought iron driveway gates and pedestrian gates at the end of the driveways within the front yard setback, located at 360 Hampton Road, Piedmont, California, which construction requires a design review permit; 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), Existing Facilities, because it is a minor change to an existing private residence which is less than 50 percent of the floor area of the structure(s) before the addition, and the project is consistent with General Plan policies and programs, and that the proposal, as conditioned, conforms to the criteria and standards of Section 17.66.060 of the Piedmont City Code:

1. The proposed design is consistent with the City's General Plan and Piedmont Design Guidelines, in that the gate material and form and the column material are all consistent with the original architecture and neighborhood development and the proposed gates will extend an existing wrought iron fence.

2. The design has little or no effect on neighboring properties' existing views, privacy, and access to direct and indirect light, because the distance between the project and homes is appropriate and there is sufficient vegetative screening.

3. The proposed design does not adversely affect pedestrian or vehicular safety because the project has no effect on pedestrian and vehicular safety, the project maintains adequate visibility for entering and exiting the driveway, and the electric gates will maintain vehicular safety entering and exiting the roadway because the driveway gates are mechanically operated.

4. As conditioned, the application complies with the following Design Review Guidelines: 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 (*fences*).

5. The project is consistent with General Plan policies and programs, including the land use element, housing element, and design and preservation element, including: Design and Preservation Element Goal 28.6 (Exterior Materials) and Design and Preservation Element Goal 29.5 (Fence and Wall Design).

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review permit application for proposed construction at 360 Hampton Road, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

1. **Fence and Stone Wall Material.** As specified in the plans, the modified fence and wall shall match the material and styling of the existing fence and stone wall.

2. **Stone Columns.** The stone columns shall match existing material and styling of the existing low stone wall.

3. **Fence Location.** The new fence, including all footings and posts, shall be located completely within the applicant's property. At the discretion of the Building Official, a licensed land surveyor may be required by the Building Department to verify and mark the location of the property lines at the time of foundation inspection to verify the approved setback dimensions measured to the new fence and that it is completely within the applicant's property.

4. **Driveway Gates.** The driveway gates shall be electronically operable. If design modifications are required to accomplish this, those modifications shall be subject to staff review.

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

6. **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 that shows alterations to vegetation and any new footpaths. The final

plan shall comply with City Code Division 17.34 and Section 17.33.30, 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. Upon the determination of the Director, minor differences in the number, size and/or species of vegetation between those shown on the approved landscape plan and those installed at the time of final inspection that do not involve an increase in hardscape or structure coverage may be subject to staff review and approval. Significant differences between the vegetation installed at the time of final inspection and vegetation shown on the approved landscape plan are subject to a design review permit.

7. 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 to preserve any nearby off-site trees near the existing driveway and trees adjacent to the driveway. 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 that are intended to be retained. The arborist shall document in writing and with photographs the tree protection measures used during these critical construction phases. If some trees have been compromised, mitigation measures must be specified in writing, and implementation certified by the Project Arborist. Trees proposed for removal shall have an in-lieu replacement tree planted elsewhere on the property, which shall be shown on a final landscape plan. Replacement tree size is subject to staff review, and shall be commensurate with the size and numbers of trees to be removed. They shall generally be a minimum of 24" box size. 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 retained trees have not been compromised by the construction.

Moved by Ode, Seconded by Jajodia
Ayes: Jajodia, Ode, Ramsey, Thiel
Noes: None
Recused: None
Absent: Behrens, Levine

**Variance and Design
Review Permit
209 San Carlos Avenue**

Resolution 367-V/DR-17

WHEREAS, the Property Owner is requesting permission to construct an extension of approximately 80 square feet at the rear (southwest) side of the house to expand a bedroom located on the first floor, expand a rooftop terrace, and other interior changes located at 209 San Carlos Avenue, which construction requires a design review permit; and,

WHEREAS, a variance from the requirements of Chapter 17 of the Piedmont City Code is necessary to construct within the 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 CEQA Guidelines Section 15301, Class 1(e), Existing Facilities, because it is a minor change to an existing private residence which is less than 50 percent of the floor area of the structure(s) before the addition, and the project is consistent with General Plan policies and programs; and,

WHEREAS, regarding the variance, the Planning Commission finds that the proposal complies with variance criteria under Section 17.70.040 of the Piedmont City Code as follows:

1. The property and existing improvements present unusual physical circumstances of the property including the lot is unusually small so that strictly applying the terms of this chapter would keep the property from being used in the same manner as other conforming properties in the zone.
2. The project is compatible with the immediately surrounding neighborhood and the public welfare, because a majority of neighboring properties are located in the setback; most homes in the neighborhood are similar in size to the proposed project.
3. Accomplishing the improvement without a variance would cause unreasonable hardship in planning, design, or construction because the location of the existing structure and the size of the proposed addition could not be accomplished without encroachment into the side yard setback, the encroachment is minimal and consistent with the existing circumstances, and the encroachment does not adversely affect neighboring properties' circulation, light, privacy, and views.

WHEREAS, regarding the design review permit, the Planning Commission finds that the proposal, as conditioned, conforms to the criteria and standards of Section 17 66 060 of the Piedmont City Code as follows:

1. The proposed design is consistent with the City's General Plan and Piedmont Design Guidelines in that the following building features are consistent with the original architecture and neighborhood development: the wall material, the deck, the window and door placement and fenestration pattern, and the guardrail material.
2. The design has little or no effect on neighboring properties' existing views, privacy, and access to direct and indirect light because the extension of the existing structure follows the same form and configuration of the original structure, the distance between the project and neighboring homes is appropriate, the project does not obstruct views, and the height has been kept as low as possible.
3. The proposed design does not adversely affect pedestrian or vehicular safety because the project does not propose any modifications to onsite circulation.
4. As conditioned, the applicant complies with the following Design Review Guidelines: II-1, II-2, II-3, II-3(a), II-3(b), II-3(c), II-3(d), II-4, II-5, II-5(a), II-6, II-6(a), II-6(b), II-6(c), and II-7 (*remodels*).
5. The project is consistent with General Plan policies and programs, including the land use element, housing element, and design and preservation element, including: Design and Preservation Policy 28.1 (Scale, Height, and Bulk Compatibility), Design and Preservation Policy 28.3 (Additions), and Design and Preservation Policy 28.8 (Acoustical and Visual Privacy).

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

design review permit application for the addition at 209 San Carlos Road, 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 wood.

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

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

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

5. **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.

6. **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.

7. Setback from Property Line Verification. Prior to foundation inspection, the applicant shall submit to the Building Official written verification by a licensed land surveyor stating that the construction is located at the setback dimension from the south 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).

Moved by Thiel, Seconded by Ode
Ayes: Jajodia, Ode, Ramsey, Thiel
Noes: None
Recused: None
Absent: Behrens, Levine

**Conditional Use Permit
370 Highland Avenue**

Resolution 377-CUP-17

WHEREAS, 1 Sharpe Capital, LLC, is requesting a minor modification to a conditional use permit to change the name of an investment company located at 370 Highland Avenue, Suite 200, Piedmont, California; and,

WHEREAS, after reviewing the application, plans, and any and all testimony and documentation submitted in connection with such application, and after having visited 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(a), and the proposal conforms with the criteria and standards of Section 17.68.040 of the Piedmont Municipal Code as follows:

- 1. The use is compatible with the General Plan and conforms to the zoning code in that the use will not change from the previously approved conditional use permit; the use complies with standards for Zone D listed in Section 1726.

2. The use is primarily intended to serve Piedmont residents rather than the larger region in that the office will continue to provide financial expertise to Piedmont residents and neighboring financial businesses.

3. Under all the circumstances and conditions of the particular case, the use will not have a material adverse effect on the health, safety, or welfare of persons residing or working in the vicinity. Considerations for this finding include no substantial increase in traffic, parking needs, or noise; no adverse effect on the character of the neighborhood; no tendency to adversely affect surrounding property values in that pedestrian and vehicular safety will not be affected because the modification is only a name change.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission recommends approval by the City Council of the conditional use permit application by 1 Sharpe Capital, LLC for 370 Highland Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

1. **Terms of the Approval.** A review of the conditional use permit shall occur in December of 2019 upon the end of the term of the lease of the building and the conditional use permit shall have the following operational characteristics:
Office Hours: Monday-Friday, 7:00 a.m.-6:00 p.m.
2. **Types of Staff/Personnel.** Two owners and four business professionals perform general office work.
3. **Signage.** Any new or modified exterior signage may require a design review permit as provided in Division 17.36 of the City Code.
4. **Defense of Legal Challenges.** If there is a third party administrative, legal or equitable action challenging the project approvals, including CEQA issues, the Property Owner shall defend and indemnify the City against any liability, fees and costs arising out of the defense, including the costs of City's own counsel. If such an action is filed, the Property Owner and City shall then enter into an agreement regarding selection of counsel and other provisions related to the defense. For this purpose, "City" includes the City and its elected and appointed officials, agents, officers and employees.

Moved by Jajodia, Seconded by Thiel
Ayes: Jajodia, Ode, Ramsey, Thiel
Noes: None
Recused: None
Absent: Behrens, Levine

REGULAR CALENDAR

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

Variance Review Permit 288 Indian Road

The Property Owner is requesting a variance from the parking requirements in order to add a sixth bedroom without supplying a third conforming parking space.

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

Public testimony was received from:

Shirley Lee, Property Owner, explained the family's desire to update the home and create a guest bedroom in the basement with separate access. Three bedrooms are located on the second floor. One small bedroom on the first floor is used exclusively as a home office. The lot is narrow and deep. Parking in front of the house would change the aesthetics of the home. Currently, there is a two-car garage and one space on the driveway. The basement has a concrete floor and full-height ceilings and a finished laundry room. The project would not require excavation. Other homes on the street are not visible from the street, but passersby can look into her home.

Amy Wong Nunes, project architect, reported that the property is large but not suitable for three covered parking spaces. The two-car garage is located below street level, and a third parking space is located beside the driveway. Extending the existing garage to a third space would create an 8-10-foot retaining wall in front of the house. Covering the current parking space would require a variance from the setback requirement. Neighborhood lots are large with off-street parking available. A variance was granted for another of her projects with similar circumstances. The current parking arrangement functions well. Changing the floor elevation of the third parking space would cause an awkward parking situation and be closer to the house. A covered space further into the front yard and in compliance with setbacks would have to be located in front of the house and would decrease the aesthetics of the house. Placing a three-car garage within the front setback would increase the amount of paving. The current parking configuration is compatible with neighboring residences.

In response to Chair Ramsey's questions, Director Jackson advised that a variance for parking would not be required if the proposal was for an accessory dwelling unit instead of a sixth bedroom. A parking exemption contained in the new parking requirements would not apply to this project because the project would have more than four bedrooms and a portion of the uncovered parking would be located in the front setback.

Commissioners Jajodia and Ode supported granting the variance because the project would not increase the intensity of use but would increase the usability of the house. Design and Preservation Policy 29.7 states the house should be visually prominent rather than the garage. Plenty of street parking is available, and the current parking arrangement is satisfactory. From a sustainability standpoint, building a third covered parking space would not be preferred.

Commissioner Thiel and Chair Ramsey did not support granting the variance because a third covered parking space could be built on the site. The project as proposed would have six bedrooms with two conforming parking spaces which does increase the intensity of use. The City's new parking requirements were intended to decrease the number of variance applications. Construction could include environmentally friendly elements.

Resolution 335-V-17

WHEREAS, the Property Owner is requesting a variance from the parking requirements in order to add a sixth bedroom without supplying a third conforming parking space located at 288 Indian Road, Piedmont, California, which construction requires a variance permit; 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 does not conform to the criteria and standards of Section 17.70.040 of the Piedmont City Code as follows:

1. The property and existing improvements do not present unusual physical circumstances of the property including the lot is not small, the lot is not unduly narrow or does not otherwise prevent the necessary configuration for an additional conforming parking space, the topography of the site does not prevent placement of a third conforming space. Thus, strictly applying the terms of this chapter would not prevent the property from being used in the same manner as other conforming properties in the zone.
2. Accomplishing the improvement without a variance would not cause an unreasonable hardship in planning, design or construction.

Moved by Thiel, Seconded by Ramsey
Ayes: Thiel, Ramsey
Noes: Jajodia, Ode
Recused: None
Absent: Behrens, Levine

Resolution 31-PL-17

RESOLVED, that the Planning Commission continues the consideration of the application for a variance at 288 Indian Road to the next available Planning Commission hearing, due to a lack of a motion that carries.

Moved by Ode, Seconded by Ramsey
Ayes: Ramsey, Jajodia, Ode
Noes: Thiel
Recused: None
Absent: Behrens, Levine

**Variance and Design
Review Permit
1143 Harvard Road**

The Property Owner is requesting permission to expand and remodel the residence, including a comprehensive stylistic change to include the following: a 335-square-foot first floor addition; a 952-square-foot second story; a 350-square-foot attached garage; roof pitch and height; roof dormers; exterior lighting; patios; railing; balcony; doors and windows; and site landscaping. A picket fence is proposed to remain in the front street side setback. The proposed project requires consideration of variances for construction in the rear (east) yard setback and right (south) side yard setback.

Written notice was provided to neighbors. **Three negative response forms and three response forms indicating no position** were received.

Public testimony was received from:

Ben Newcomb, project designer, reported the proposed project meets all requirements including parking. Parking can accommodate one full-size vehicle and one compact vehicle. In the current plans, the office is no longer a bedroom and the library is not enclosed. The breezeway increases circulation to the backyard and is included in the floor area ratio. The garage is proposed to be attached.

Louise Godfrey, neighbor at 1147 Harvard Road, expressed concerns about mass, the lack of story poles in front of the home, and the reduced amount of backyard.

Ruth Koch, neighbor at 1130 Harvard Road, expressed concerns about the height, mass, and bulk of the proposed home. The proposed home will be larger than other homes in the neighborhood.

The Commissioners were in support of the project, stating the project meets all requirements of the code. The architectural treatment of the addition minimizes the overall scale and bulk of the addition. The addition will not block sunlight to adjacent properties. The project is compatible with the neighborhood character.

Resolution 343-V/DR-17

WHEREAS, the Property Owner is requesting permission to expand and remodel the residence, including a comprehensive stylistic change to include the following: a 335-square-foot first floor addition; a 952-square-foot second story; a 350-square-foot attached garage; roof pitch and height; roof dormers; exterior lighting; patios; railing; balcony; doors and windows; and site landscaping, located at 1143 Harvest Road, Piedmont, California, which construction requires a design review permit; and,

WHEREAS, a variance from the requirements of Chapter 17 of the Piedmont City Code is necessary to construct within the rear yard setback and right 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 CEQA Guidelines Section 15301, Class 1(e), Existing Facilities, because the project consists of accessory structures, existing landscaped areas, and additions to an existing private residence which is less than 10,000 square feet of floor area, the project is in an area where all public services and facilities are available to allow for maximum development permissible in the General Plan, and the area is not environmentally sensitive because the area is surrounded by existing development and the proposed project is consistent with General Plan programs and policies; and,

WHEREAS, regarding the variance, the Planning Commission finds that the proposal complies with the variance criteria under Section 17.70.040 of the Piedmont City Code as follows:

1. The property and existing improvements present unusual physical circumstances of the property including the lot is unusually small so that strictly applying the terms of this chapter would keep the property from being used in the same manner as other conforming properties in the zone.
2. The project is compatible with the immediately surrounding neighborhood and the public welfare because most homes in the neighborhood are similar in size to what is being proposed and a majority of neighboring properties are located in the side setbacks.
3. Accomplishing the improvement without a variance would cause unreasonable hardship in planning, design, or construction because the lot is

narrow and development is nearly impossible without encroaching on the setbacks.

WHEREAS, regarding the design review permit, the Planning Commission finds that the proposal, as conditioned, conforms to the criteria and standards of Section 17.66.060 of the Piedmont City Code as follows:

1. The proposed design is consistent with the City's General Plan and Piedmont Design Guidelines in that the following building features are consistent with the original architecture and neighborhood development: the scale and building mass of the existing residence, once the addition/remodel has been completed, will maintain compatibility with the scale and mass of the existing residences in the neighborhood; the second-story addition is consistent with the materials and design of the residence and neighborhood development; the door and window patterns continue the existing door and window patterns.
2. The design has little or no effect on neighboring properties' existing views, privacy, and access to direct and indirect light because the distance between the project and neighboring homes is appropriate, the remodel and addition provides breaks in the roof form to maintain all or most of the views and direct and indirect light enjoyed by neighboring properties.
3. The proposed design does not adversely affect pedestrian or vehicular safety because access on the property but not around the property changes; and as conditioned, landscape plantings shall be shown on the landscape plan and restricted where they might obstruct sightlines for motorists and pedestrians.
4. As conditioned, the application complies with the following design guidelines and General Plan policies and programs: Design Review Guidelines II-1, II-2, II-3, 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, II-7(a) (*remodels*), III-5, III-5(a), III-6, III-6(a), III-7, III-7(a) (*garages*); 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 (*fences/walls*).
5. The project is consistent with General Plan policies and programs, including the land use element, housing element, and design and preservation element, including Design and Preservation Element Policy 28.1 (Scale, Height, and Bulk Compatibility), Design and Preservation Element Policy 28.2 (Style Compatibility), Design and Preservation Element Policy 28.3 (Additions), Design and Preservation Element Policy 28.4 (Setback Consistency), Design and Preservation Element Policy 28.5 (Garages, Decks, and Porches), Design and Preservation Element Policy 28.6 (Exterior Materials), Design and Preservation Element Policy 28.8 (Acoustical and Visual Privacy), Design and Preservation Element Policy 29.2 (Landscape Design), Design and Preservation Element Policy 29.3 (Front Yard Enclosures), Design and Preservation Element Policy 29.4 (Maintaining Privacy), Design and Preservation Element Policy 29.5 (Fence and Wall Design), Design and Preservation Element Policy 29.7 (Driveway and Parking Location), Design and Preservation Element Policy 29.8 (Exterior Lighting), and Design and Preservation Element Policy 29.9 (Sight Obstructions).

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the variance application and the design review permit application for the construction at 1143 Harvard Road,

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

1. **Approved Plan Set.** The approved plans are those submitted on November 7, 2017, after notices to neighbors were mailed and the application was available for public review, unless modified herein. Plans submitted for Building Permit shall show that the garage walls are not increasing in height or depth and that there are no projections within 2 feet of the south or east property lines. Plans submitted for building permit shall provide additional construction details for the exterior landing on the north elevation.

2. **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 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.

3. **Contractor's General Liability Insurance.** To ensure that the contractor doing work in the City will be responsible for damages caused by the work to City property or to neighboring property, the Property Owner shall require all contractors performing work on the Project to maintain General Liability Insurance for protection from claims for damages because of bodily injury, including death, and claims for damages, other than to the contractor's work itself, to property which may arise out of or result from the contractor's operations. Such insurance shall be written for not less than \$1,000,000 per occurrence. The insurance shall include an endorsement requiring 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.

4. **BAAQMD Compliance.** The applicant shall comply with the Bay Area Air Quality Management District regulations related to any building demolition. The Demolition Notification form is available on their website at www.BAAQMD.gov/forms.

5. **Roof Color.** Roof materials shall be slate as shown on approved plans. The proposed area of flat roof shall be a non-reflective medium or dark color to minimize the visual impact on upslope properties. Gutters, downspouts, and conductor heads shall be copper, untreated and unsealed so that finish develops a patina over time. Minor modifications to the design and materials of the roof may be subject to staff review and approval.

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

shall be wood windows with three-dimensional simulated divided lites or true divided lites.

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

8. **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.

9. **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.

10. **C&D Compliance.** Compliance with Chapter 5 Article I 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. **Setback from Property Line Verification.** Prior to foundation or frame inspection, the applicant shall submit to the Building Official written verification by a licensed land surveyor stating that the construction is located at the setback dimension from the north, south, east, and west 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.

13. **Encroachment Permit.** Before the issuance of a building permit, the Property Owner shall apply for an encroachment permit existing construction within the public right-of-way or public easement, or as required by the Public Works Director. Encroachments include the existing fence within the public right-of-way.

14. **Stormwater Design.** The California Regional Water Quality Control Board requires all projects, or a combination of related projects, that create and/or replace 2,500 square feet or more of impervious surface to comply with Provision C.3.i of the Municipal Regional Stormwater NPDES Permit. If required by the Chief Building Official, the Property Owner shall verify the total area of impervious surface to be created and/or replaced within the scope of this project, or this project combined with other related projects and/or permits, and incorporate the site design measure(s) required under Provision C.3.i into the plans submitted for a building permit. Copies of the Municipal Regional Stormwater Permit are available from the Piedmont Public Works Department and on-line at cleanwaterprogram.org.

15. **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 to preserve existing trees on neighboring properties at 1139 Harvard Road and 82, 84 and 88 Oakmont Avenue with root zones and limbs that are in close proximity to the planned construction. The tree preservation measures shall be on the appropriate sheets of the construction plans. The Project Arborist shall be on-site during critical construction activities, including grading and clearance pruning. The arborist shall document in writing and with photographs the tree protection measures used during these critical construction phases. If some trees have been compromised, mitigation measures must be specified in writing, and implementation certified by the Project Arborist. Trees proposed for removal shall have an in-lieu replacement tree planted elsewhere on the property, which shall be shown on the final landscape plan. Replacement tree size is subject to staff review, and shall be commensurate with the size and numbers of trees to be removed. They shall generally be a minimum of 24" box size. Before the Final Inspection, the Project 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 retained trees have not been compromised by the construction.

16. 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 City Code Division 17.34 and Section 17.33.30, 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. Upon the determination of the Director, minor differences in the number, size and/or species of vegetation between those shown on the approved landscape plan and those installed at the time of final inspection that do not involve an increase in hardscape or structure coverage may be subject to staff review and approval. Significant differences between the vegetation installed at the time of final inspection and vegetation shown on the approved landscape plan are subject to a design review permit.

17. California's Water Efficient Landscape Ordinance: As required by the Building Official, Property Owner shall comply with the requirements of California's Model Water Efficient Landscape Ordinance that went into effect December 1, 2015, 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).

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

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

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

20. City Facilities Security. The Property Owner shall provide a specific cash deposit, letter of credit, bank guarantee, or other similar financial vehicle ("City Facilities Security") in an amount of \$50,000 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.

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

22. City Attorney Cost Recovery. If there is a substantial additional commitment of City Attorney's time required to accommodate the scope and nature of the Project, the Property Owner shall, at the time of the Building Permit Application, make a cash deposit with the City in the amount of \$5,000 to be used to offset time and expenses of the City Attorney relating to the Project. If such cash deposit has been reduced to \$2,500.00 or less at any time, the Director of Public Works may require the Property Owner to deposit additional funds to cover any further estimated additional City Attorney time and expenses. Any unused amounts shall be refunded to the Property Owner within 90 days after the Project has an approved Final Inspection by the Chief Building Official.

23. Site Safety Security. 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 \$25,000 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.

24. 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 route of construction vehicles to and from the project site. 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.** 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.

25. **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 Jajodia, Seconded by Thiel
Ayes: Jajodia, Ode, Ramsey, Thiel
Noes: None
Recused: None
Absent: Behrens, Levine

**Conditional Use Permit
801 Magnolia Avenue**

Nancy Lehrkind, on behalf of the Piedmont Center for the Arts, is requesting a conditional use permit to operate a new office for the Piedmont Post at 801 Magnolia Avenue. The City building is currently being leased to the Piedmont Center for the Arts, which is proposing to sublease the office space in the northwest corner of the building to the Piedmont Post, a for-profit commercial entity.

Commissioner Ramsey introduced the application and outlined the parameters under which the Commission reviews application for conditional use permit.

Director Jackson reviewed the standards and findings for approval of a conditional use permit. He noted that the applicant’s tax status and the fact that the building is City-owned are not criteria in the review of a conditional use permit.

Written notice was provided to neighbors. **One negative response form and one response form indicating no position** were received. Correspondence was received from: Tim McCalmont, Gregory J. Cost, Jane Cullinan, Rick

Raushenbush and Barbara Giuffre, Rachel Asa, Kathleen Quenneville, Rick Schiller, and Len Gilbert.

Public testimony was received from:

Nancy Lehrkind, applicant, reported the loss of a tenant for the space would negatively affect the Piedmont Center for the Arts' revenue flow. The Post would occupy 600 square feet of the building and have two dedicated off-street parking spaces. Any tenant of the space has non-exclusive use of the office, which deters most tenants.

Dave and Nancy DeRoche, Piedmont residents, support granting the conditional use permit for the Post to occupy the space.

Rachel Asa, neighbor at 29 Vista Avenue, expressed concerns regarding traffic, noise, and the late hours of operation. These issues would affect the quiet enjoyment of her home.

Sue Malick, Piedmont Center for the Arts President, advised that traffic and noise will not be issues as the newspaper will not be printed and distributed from the Magnolia Avenue office and most content is received by email. The rental income from this space is a necessary revenue stream for the Piedmont Center for the Arts.

Rick Schiller opposed granting the conditional use permit because the Post does not serve all residents of the City.

The Commissioners supported granting the conditional use permit because the application complies with the requirements for a conditional use permit.

Resolution 373-CUP-17

WHEREAS, Nancy Lehrkind, on behalf of the Piedmont Center for the Arts, is requesting permission to operate an office for a for-profit commercial entity, The Piedmont Post, at 801 Magnolia Avenue, Piedmont, California, for which a conditional use permit is required; 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 recommends that the project is categorically exempt under the California Environmental Quality Act, pursuant to Section 15301, Class 1(a) because it is an interior alteration involving such things as interior partitions, plumbing, and electrical conveyance, and the proposed use meets the criteria under Section 17.68.040 of the Piedmont Municipal Code as follows:

1. The proposed use is compatible with the General Plan and conforms to the zoning code in that City buildings may be used by a for-profit commercial entity as provided in Section 17.22.030.
2. The use is primarily intended to serve Piedmont residents in that residents benefit from the weekly issuance of the Piedmont Post for news, notices, and community events. It provides a forum for the exchange of ideas and public engagement. The use will allow for the continued benefit for Piedmont residents for the Piedmont Center for the Arts because they require rental income to provide affordable programming for residents as part of their business plan.

3. Under all the circumstances and conditions of the particular case, the use will not have a material adverse effect on the health or safety of persons residing or working in the vicinity. Considerations for this finding include no substantial increase in traffic, parking needs, or noise; no adverse effect on the character of the neighborhood; no tendency to adversely affect surrounding property values in that two off-street parking spaces are provided and business hours are not in direct conflict with Piedmont Unified School District or City business hours.

4. The project is consistent with General Plan policies and programs, including the land use element, housing element, and design and preservation element, including: Transportation Element Policy 11.4 (Shared Parking), Land Use Element Policy 2.5 (Off-Site Impacts), and Land Use Element Policy 4.1 (Civic Center).

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission recommends approval by the City Council of the conditional use permit application for 801 Magnolia Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

1. **Terms of the Approval.** A review of the conditional use permit shall occur in May of 2021 upon the end of the term of the lease of the building and the conditional use permit shall have the following operational characteristics:

Office Hours: Sundays, 4:00 p.m.-12:00 a.m.; Monday, 11:00 a.m.-11:00 p.m.; Tuesday, 12:00 p.m.-12:00 a.m.; Thursday, 9:00 a.m.-11:00 a.m.; and normal business hours not listed above Monday through Friday from 8:00 a.m. to 5:00 p.m.

2. **Types of Staff/Personnel:** One Owner/Manager, one office manager, and two part-time reporters.

3. **Signage.** Any new or modified exterior signage may require a design review permit as provided in Division 17.36 of the City Code.

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

Moved by Ode, Seconded by Jajodia

Ayes: Jajodia, Ode, Ramsey, Thiel

Noes: None

Recused: None

Absent: Behrens, Levine

ADJOURNMENT

There being no further business, Chairman Ramsey adjourned the meeting at 6:46 p.m.