

PIEDMONT CITY COUNCIL

Regular Meeting Minutes for Monday, October 21, 2019

A Regular Session of the Piedmont City Council was held October 21, 2019, in the City Hall Council Chambers at 120 Vista Avenue. In accordance with Government Code Section 54957(b), the agenda for this meeting was posted for public inspection on October 17, 2019.

CALL TO ORDER Mayor Bob McBain called the meeting to order at 7:30 p.m. with the Pledge of Allegiance.

ROLL CALL Present: Mayor Bob McBain, Vice Mayor Teddy Gray King, and Councilmembers Jennifer Cavanaugh, Tim Rood, and Betsy Smegal Andersen

Staff: Assistant City Administrator / City Clerk John Tulloch, City Attorney Michelle Marchetta Kenyon, Public Works Director Chester Nakahara, City Engineer John Wanger, Planning & Building Director Kevin Jackson, Senior Planner Pierce Macdonald-Powell, Parks & Project Manager Nancy Kent, and Deputy City Clerk Lisa Argue

PUBLIC FORUM There were no speakers for Public Forum.

CEREMONIAL ITEMS

Domestic Violence Awareness Month Mayor McBain presented a proclamation declaring October 2019 as Domestic Violence Awareness Month to Dick Carter. Dick Carter advised that he conducted the Coaching Boys into Men program for the Piedmont High School junior varsity football team. Over 10-12 weeks, the program covered topics such as personal responsibility, insulting language, and disrespectful behavior towards women and girls.

Breast Cancer Awareness Month Mayor McBain presented a proclamation declaring October 2019 Breast Cancer Awareness Month.

REGULAR AGENDA

The Council considered the following items of regular business:

Council Meeting Minutes Approval of Council Meeting Minutes for 09/03/19 and 09/16/19

There was no **Public Testimony** on the matter.

Resolution No. 66-19

RESOLVED, that the City Council approves the Minutes of its 09/03/19 and 09/16/19 meetings.

Moved by Rood, Seconded by Cavanaugh

Ayes: Andersen, Cavanaugh, King, McBain, Rood

Noes: None

Absent: None

Councilmember Andersen abstained from the vote on the September 3, 2019 minutes. Vice Mayor King abstained from the vote on the September 16, 2019 minutes.

89 Maxwelton Road Appeal

Assistant City Administrator / City Clerk John Tulloch introduced the item and indicated that pursuant to the City Code, the Council can only consider only the matters the appellants raised in their appeal.

Planning & Building Director Kevin Jackson explained the history of the

property owner's applications for design review permits for a new accessory structure, which was denied by the Planning Commission and, separately, for a new house and garage which was previously approved by the Planning Commission, on undeveloped property at 89 Maxwelton Road. He indicated that property owners appealed the Planning Commission's denial of the application pertaining to a new accessory structure. Mr. Jackson described the proposed project; and summarized the basis for the property owner's appeal. He then reviewed the Planning Commission's decision and findings as well as the basis for staff's recommendation.

Mayor McBain opened the Public Hearing at 7:53 p.m.

Public Testimony was received from:

Jack Preston, Philip Stein, and Lucas Tomsich supported the Planning Commission's decision to deny the permit for the accessory structure based on the large size of the house and garage, concerns about privacy, and the amount of soil to be excavated.

John Newton, Joyce Tang, and Dylan Casey urged the Council to overturn the Planning Commission's decision and approve the project as the proposed accessory structure complies with design standards and the Planning Commission's decision violates state law.

Mayor McBain closed the Public Hearing at 8:15 p.m.

The Council discussed the item at length. The Council indicated its appreciation for the work undertaken by the Planning Commission and its respect for the time and effort put in by the commissioners, who are each volunteers. Councilmembers expressed their belief that the Planning Commission worked in good faith and had not committed errors in making its decision. After reviewing the Planning Commission's discussion and decision, as well as the need to consider the accessory structure only, Councilmembers generally agreed with the staff recommendation to overrule the Planning Commission's decision.

In moving the item, Councilmember Andersen suggested the Council remove references in the resolution to errors made by the Planning Commission and increase the errors and omissions insurance coverage requirement from \$1 million to \$2 million.

Resolution No. 67-19

WHEREAS, the Property Owners are requesting permission to construct a 798-square-foot, single-story accessory structure and associated site changes pursuant to Section 17.38.070.B, located at 89 Maxwelton Road, which construction requires a design review permit; and,

WHEREAS, the Planning Commission considered the design review permit application during its regular meeting on August 12, 2019 and denied the application, finding that the project is not consistent with General Plan policies and programs, and that the proposal does not conform to the criteria and standards of Section 17.66.060 of the Piedmont City Code; and

WHEREAS, on August 21, 2019, the applicants and owners of the property at 89 Maxwelton Road, Joyce Tang and Keven Kwok, submitted an appeal of the Planning Commission's decision to deny the application for a new accessory

structure, stating the grounds for appeal in accordance of the provisions in City Code division 17.78; and

WHEREAS, after reviewing the application, plans, staff report and any and all testimony, documentation and other evidence submitted in connection with such application; after reviewing the appeal documents submitted by the property owners of 89 Maxwellton Road; after reviewing the findings made by the Planning Commission to support its decision to deny the application; the Piedmont City Council finds:

- That the findings made by Planning Commission as a basis for its decision to deny the application for design review permit are not supported by the weight of the evidence for the reasons set forth in the staff report;
- That the project is categorically exempt under the California Environmental Quality Act, pursuant to Section 15303, Class 3 (a) of the CEQA Guidelines because the project consists of an accessory structure to be constructed within a single-family zoning district and used as an accessory dwelling unit, because there are no unusual circumstances associated with the property or the project, because existing General Plan policies and programs are sufficient to address the proposed grading, excavation, and construction, and because there is no substantial evidence that any exception to the Class 3 Categorical Exemption applies to this project, specifically including the unusual circumstances exception;
- That 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 as follows:
 - A. 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 architecture of the primary residence and neighborhood development: the wall material; the roof form, slope and materials; the window and door design, material and fenestration; and the placement of the building mass on the site and within the terrain. The siting of the structure is visually integrated with the neighborhood and respects adjacent properties.
 - B. 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 topographical differences are appropriate to preserve privacy, views, and light; the view from neighboring properties is not a significant view as defined in City Code section 17.90.010; the height of the new structure has been kept as low as possible; and the project proposed adequate vegetative screening between properties.
 - C. The proposed design does not adversely affect pedestrian or vehicular safety because: the project does not adversely affect visibility for entering or exiting the driveway; no changes to the public right-of-way are proposed; and the on-grade steps and their handrail provide safe access to the structure.
 - D. The application is consistent with all relevant Design Review Guidelines, including the following: 3.03.01.1 (Significant Views), 3.03.02.1 to 3.03.02.3 (Visual and Acoustical Privacy, Access to Direct or Indirect Light), 3.11.03.1 to 3.11.03.14 (On Site Landscape Aesthetic and Environmental Design), 3.12.01.2 (Dark Sky Exterior Light Fixtures), and 3.12.02.1 to 3.12.02.4 (On-Site Lighting Design); 4.02.01.1 (Foundations), 4.02.01.5 to 4.02.01.7 (Stairs, Doors and Exterior Wall Material), 4.02.01.9

(Ornamentation on New Construction), 4.02.01.11 (Roof on New Construction), 4.03.04.1 to 4.03.04.7 (Windows in New Construction), 4.05.02.1 to 4.05.02.7 (Green Building On-Site Landscape Design Principles), and 4.05.03.1 to 4.05.03.4 (Green Building On-Site Building Design Principles); 5.01.01 (Neighborhood and Contiguous Parcel Compatibility) and 5.03.01.1 (Accessory Dwelling Unit Neighborhood and Contiguous Parcel Compatibility) and 5.03.02.1 (Accessory Dwelling Units On-Site Aesthetic Design Compatibility).

- E. The application is consistent with all relevant General Plan policies and programs, including the following: Natural Resources and Sustainability Element Policy 13.4 (Conserving Native Vegetation), 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 28.6 (Exterior Materials), Design and Preservation Element Policy 28.7 (Hillside Home Design), 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 29.6 (Retaining Walls), Design and Preservation Element Policy 29.8 (Exterior Lighting), Land Use Element Policy 1.2 (Neighborhood Conservation), Housing Element Policy 1.6 (Second Units in New or Expanded Homes), and Housing Element Policy 6.7 (Water Conservation).

NOW, THEREFORE, BE IT RESOLVED, that based on the findings and facts set forth heretofore, the City Council overrules Planning Commission Resolution 195-DR-19 and approves the design review permit application number 19-0195 for the construction of an accessory structure and associated site changes at 89 Maxwelton Road, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

1. **Approved Plans.** Plans submitted for Building Permit must match plans dated received July 24, 2019, with plan sheet A1.0, site and landscape plan, submitted August 9, 2019, unless modified by the conditions of approval herein.
2. **Licensed Design Professional Required.** In conformance with the Architects Practice Act, Business and Professions Code section 5500 et seq., all plans, specifications, and other instruments of service submitted for review and approval of a building permit for the proposed construction project, must be prepared by or under the responsible control of, and stamped and signed by, a properly licensed design professional.
3. **Window and Door Material.** As specified in the plans, the building material for the new windows and doors shall be fiberglass, except for the wood front door and wood or aluminum garage door.
4. **Window Color Scheme.** All the windows on the house shall have a consistent color scheme.
5. **Window Recess.** All new windows shall be recessed 2 inches from the exterior wall to the face of window sash in order to maintain consistency, as required by the City's Design Guidelines and Window Replacement Policy. Window details shall be submitted for review and approval at the time of building permit application.

6. **Pre-construction Inspection.** Prior to the commencement of window fabrication, the installer shall schedule a pre-construction inspection with the Building Department to review the approved installation criteria, such as the window recess, window trim if any, and window sill projection if any.
7. **Roof Color.** The proposed roof shall be a non-reflective medium or dark color to minimize the visual impact on upslope properties.
8. **Exterior Lighting.** All new exterior light fixtures shall be downward directed with an opaque or translucent shade that completely covers the light bulb.
9. **C&D Compliance.** Compliance with Section 9.04 of the Municipal Code, which governs the recycling of construction and demolition debris, is required for all phases of this project.
10. **Building Height and Floor Level Verification.** Prior to foundation and/or frame inspection, the applicant shall provide the Building Official written verification by a licensed land surveyor stating that the floor level(s) and roof of the new structure(s) are constructed at the approved height(s) above grade.
11. **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 north, south, east, and west property line(s) 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).
12. **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.
13. **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. 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. All landscaping and exterior ornamental foliage shall comply with 14 CCR § 1299.03 prior to occupancy. 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.
14. **Entry Path to Accessory Structure.** In order to provide adequate access for residents and emergency personnel, the entry path and steps from the street to the habitable accessory structure shall be constructed of concrete. The stairway and path shall meet the requirements of California Residential

Building Code Section R311.7 and other applicable codes. In addition, the pathway shall be provided with low-voltage, downward-directed path lighting.

15. **Foundation/Shoring/Excavation Plan.** The Property Owner shall submit foundation, excavation, and shoring plans prepared by a licensed civil or structural engineer that fully address issues of site shoring, fencing and hillside security issues. The plans shall not require any trespassing or intruding into neighboring properties (without prior written consent), and shall mitigate against any subsidence or other damage to neighboring properties. Such plans shall incorporate as appropriate the recommendations of the Property Owner's geotechnical engineer and the City's geotechnical consultant, and shall be subject to approval by the City Engineer and the Chief Building Official.
16. **Geotechnical Report and Review.** At the option of the Building Official, the property owner shall submit a report prepared by a geotechnical engineer of the Property Owner's choice that fully assesses the existing site conditions, and addresses all issues regarding excavation and grading, foundations and their construction, drainage, retaining wall systems, periodic on-site observations, and other related items involving the Project.
 - a. **Peer Review.** The City, at the Property Owner's sole expense, shall retain an independent geotechnical consultant to perform a peer-review of the Property Owner's geotechnical report and advise the City in connection with the Property Owner's proposals. The City Engineer shall select this independent geotechnical consultant, whose services shall be provided for the sole benefit of the City and whose reports and recommendations can be relied upon only by the City. The independent geotechnical consultant shall also review the building plans during the permit approval process, and may provide periodic on-site observations during excavation and construction of the foundations as deemed necessary by the City Engineer. The Property Owner shall provide payment for this at the time of the Building Permit submittal.
17. **Blasting.** No blasting shall be allowed for any rock removal on this project.
18. **Double Trailer Truck Prohibition.** To reduce potential damage to the streets and to avoid traffic hazards on narrow curving city streets, no double trailers shall be used as part of the Project.
19. **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.

20. **Subsidence.** The Property Owner acknowledges and agrees that all work on the Project may be immediately stopped by the City in the event of any unanticipated landslides, subsidence, creep, erosion or other geologic instability, and may not resume until the City Engineer is fully assured that no further subsidence or erosion will occur. If in the opinion of the City Engineer, the instability poses a danger to public or private property, and Property Owner is not responding in a diligent manner, the Director of Public Works may use proceeds from the Site Safety Security required above to address the instability.
21. **Errors and Omissions Insurance.** Notwithstanding any other condition hereof, any Project Architect, Structural Engineer, Civil Engineer, Geotechnical Engineer or Shoring Engineer to be retained by the Applicant to perform work relating to project on Applicant's property shall be required to maintain errors and omissions insurance coverage with limits of no less than \$2,000,000.00 per claim that will specifically be available to cover any errors and/or omissions relating to any work performed by that professional involving Applicant's property.
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. **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, emergency access, 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.

24. **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 of the project as a whole for 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 Construction Completion 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 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. In the event of a change in scope of the Project that would alter the benchmarks dates set forth in the Approved Construction Completion Schedule, or in the event the Property Owner fails to meet a benchmark set forth in the Approved Construction Completion Schedule, the Property Owner shall immediately submit a request to amend the Approved Construction Completion Schedule to the Director of Public Works. The request to amend shall be accompanied by a new proposed Construction Completion Schedule in compliance with subsection (a) of this condition of approval and the Director of Public Works shall evaluate the proposed amendments to the Approved Construction Completion Schedule in accordance with subsection (b) of this condition of approval.
 - d. The failure of the Property Owner to comply with the Approved Construction Completion Schedule, or any amendments to it approved in conformance with subsection (d) of this condition of approval, shall constitute a nuisance under the City of Piedmont City Code ("City Code"). The failure of the Property Owner to comply with the Approved Construction Completion Schedule may result in the City pursuing administrative citations pursuant to Chapter 1 of the City Code, nuisance abatement pursuant to Chapter 6 of the City Code, or any other remedy available to the City under the law. Additionally, if the Property Owner fails to comply with the Approved Construction Completion Schedule, the Director of Public Works, at his or her sole discretion, may 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, at his or her sole discretion, may refer the application to the Planning Commission for public review and direction.

Moved by Andersen, Seconded by Rood
Ayes: Andersen, Cavanaugh, King, McBain, Rood
Noes: None
Absent: None
(0080)

**Paving Agreement with
East Bay Municipal
Utility District**

Mr. Tulloch reported East Bay Municipal Utility District (EBMUD) has completed a water main replacement project on Sunnyside, Olive, and Oakland Avenues. He indicated that Public Works Staff and the City Engineer worked with EBMUD to reach an agreement to pave the full width of the streets, rather than the portion generally repaved by EBMUD after water main replacements. The proposed agreement would have the City pay for the additional work it had requested and EBMUD pay for the work it would generally do.

Public Works Director Chester Nakahara provided additional detail on the proposed project, including timing and bidding information. He indicated that this pavement restoration work will dovetail with a project for pedestrian enhancements and paving in and around the Oakland Avenue bridge and the One Bay Area Grant II project.

There was no **Public Testimony** on the matter.

Resolution No. 68-19

WHEREAS, the City of Piedmont issued Excavation Permit EX17-00054 to East Bay Municipal Utility District (EBMUD) for replacement of water mains in the Sunnyside Avenue, Oakland Avenue and Olive Avenue area of the City (hereinafter referred to as "Project"); and

WHEREAS, the Excavation Permit specified paving and slurry sealing limits on the various impacted streets associated with EBMUD's project; and

WHEREAS, during the course of construction, the City determined that it would be in the best interest of the City and the residents living within the construction area impacted by the Project to include additional paving and slurry sealing such that all streets were treated to their entire widths; and

WHEREAS, EBMUD has provided an Agreement to the City to clarify the financial responsibility of the City for this additional work; and

WHEREAS, the City and EBMUD are in final negotiations on the terms of that agreement;

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Piedmont does hereby resolve, declare, determine, and order as follows:

1. The above recitals are true and correct and are hereby incorporated into this Resolution as findings of the City Council.
2. The City Administrator is authorized to execute a cost-sharing agreement with EBMUD for reimbursement of City costs related to the Project that is associated with Excavation Permit EX17-00054, subject to modifications approved by the City Attorney, in an amount not to exceed \$167,476 in City contribution for the project.
3. The maximum contribution by the City for work associated with this Project shall be \$167,476.
4. All portions of this resolution are severable. Should any individual

component of this Resolution be adjudged to be invalid and unenforceable by a body of competent jurisdiction, then the remaining resolution portions shall be and continue in full force and effect, except as to those resolution portions that have been adjudged invalid.

The City Council of the City of Piedmont hereby declares that it would have adopted this Resolution and each section, subsection, clause, sentence, phrase and other portion thereof, irrespective of the fact that one or more section subsection, clause sentence, phrase or other portion may be held invalid or unconstitutional.

Moved by King, Seconded by Rood
Ayes: Andersen, Cavanaugh, King, McBain, Rood
Noes: None
Absent: None
(0045, 0430, 1000)

REPORTS AND ANNOUNCEMENTS

Councilmember Andersen announced the "Get Ready, Piedmont" disaster preparedness guide and checklist are available on the City website. She indicated that the Planning Commission will consider Crown Castle's application for small cell wireless facilities at a special meeting on October 29th. She invited residents to attend the launch of the Piedmont Climate Challenge on November 7th at the Community Hall.

Councilmember Rood reminded Piedmonters who are medically dependent on electricity to contact PG&E to prepare for public safety power shutoffs. Information regarding disaster preparedness and public safety power shutoffs is available at ebce.org.

Councilmember Cavanaugh announced the Pool Pumpkin Patch will be held on October 26th and that the Police and Fire Departments will host a Trunk or Treat event on Halloween. She reminded residents to vote in the PUSD special election on November 5th. She invited residents to participate in a survey regarding public safety cameras and announced upcoming screenings for the Appreciating Diversity film series.

Vice Mayor King indicated that Piedmont was well represented at the League of California Cities Annual Conference with herself, Councilmember Cavanaugh, City Administrator Sara Lillevand, and City Attorney Michelle Marchetta Kenyon in attendance.

ADJOURNMENT

There being no further business, Mayor McBain adjourned the meeting at 8:53 p.m.