

PIEDMONT PLANNING COMMISSION

Regular Meeting Minutes for Monday, April 13, 2020

A Regular Session of the Piedmont Planning Commission was held April 13, 2020, via ZOOM teleconference consistent with Executive Orders No. N-25-20 and N-29-20 and the Alameda County Health Official's Order #20-04. In accordance with Government Code Section 54954.2(a), the agenda for this meeting was posted for public inspection on March 30, 2020.

CALL TO ORDER

Chairman Levine called the meeting to order at 5:30 p.m.

ROLL CALL

Present: Commissioners Allison Alessio, Rani Batra, Yildiz Duransoy, Jonathan Levine, Tom Ramsey, Alternate Commissioner Doug Strout

Absent: None

Staff: Planning & Building Director Kevin Jackson, Senior Planner Pierce Macdonald-Powell, Assistant Planner Steven Lizzarago, Planning Technician Ignacio Franco, Administrative Assistant Mark Enea, Assistant City Administrator/City Clerk John Tulloch

ELECTION OF OFFICERS

Resolution 9-PL-20

RESOLVED, that the Planning Commission appoints Allison Alessio to serve as Commission Chair and Rani Batra to serve as Commission Vice Chair for one year.

Moved by Levine, Seconded by Ramsey

Ayes: Alessio, Batra, Duransoy, Levine, Ramsey

Noes: None

Recused: None

Absent: None

Resolution 10-PL-20

RESOLVED, that the Planning Commission appoints Jonathan Levine to serve as Acting Commission Chair for the April 13, 2020 meeting.

Moved by Alessio, Seconded by Ramsey

Ayes: Alessio, Batra, Duransoy, Levine, Ramsey

Noes: None

Recused: None

Absent: None

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 11-PL-20

RESOLVED, that the Planning Commission approves as presented its meeting minutes of the March 9, 2020, regular hearing of the Planning Commission.

Moved by Alessio, Seconded by Batra

Ayes: Alessio, Batra, Duransoy, Levine, Strout

Noes: None

Abstaining: Ramsey

Absent: None

CONSENT CALENDAR

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

- 941 Moraga Avenue (Design Review Permit).

Resolution 12-PL-20

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

Moved by Batra, Seconded by Duransoy

Ayes: Alessio, Batra, Duransoy, Levine, Ramsey

Noes: None

Abstaining: None

Absent: None

At the end of the meeting, the following Resolution was approved adopting the Consent Calendar:

**Design Review Permit
941 Moraga Avenue**

Resolution 48-DR-20

WHEREAS, the Property Owner is requesting permission to construct a maximum 10-foot-8-inch tall retaining wall adjacent to the existing wall along the north side of the driveway and a guardrail on top and to repair the existing stairs at 941 Moraga 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 addition, 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:

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 design of the retaining wall and adjacent stairs is consistent with the existing house.
2. The design has little or no effect on neighboring properties' existing views, privacy, and access to direct and indirect light because there are no neighboring properties.
3. The proposed design does not adversely affect pedestrian or vehicular safety because it will increase pedestrian safety by adding a fence atop the retaining wall.
4. As conditioned, the application complies with the following Design Review Guidelines and General Plan policies and programs: 3.08.01.1, 3.08.01.2, 3.08.02.1, 3.08.02.2, 3.08.02.3, 3.08.02.4, 3.08.02.5, 3.08.02.6, 3.08.03.1 (Site Design), 4.02.01.5, 4.02.01.7 (Building Design: General).
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 28.6 (Exterior Materials), Design and Preservation Element Policy 29.6 (Retaining Walls).

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review permit application for construction at 941 Moraga Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

1. Contractor's General Liability Insurance. To ensure that the contractor doing work in the City will be responsible for damages caused by the work to City property or to neighboring property, the Property Owner shall require all contractors performing work on the Project to maintain General Liability Insurance for protection from claims for damages because of bodily injury, including death, and claims for damages, other than to the contractor's work itself, to property which may arise out of or result from the contractor's operations. Such insurance shall be written for not less than \$2,000,000 per occurrence. The insurance shall include an endorsement requiring 10 days prior notice to the City if the insurance is to be cancelled or changed, and Property Owner shall immediately arrange for substitute insurance coverage. If the contractor's insurance carrier states in writing that it is unable to provide the required endorsement, Property Owner shall be responsible for providing the City with the required notice if the insurance is to be cancelled or changed. Property Owner's failure to provide such notice shall constitute grounds for revocation of the City's design review approval and/or permit. If the Property Owner does not have a general contractor, the Property Owner shall maintain property insurance and coverage for contractors, which is substantially equivalent to the contractor's requirement of this section.

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

3. 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.

4. Defense of Legal Challenges. If there is a third party administrative, legal or equitable action challenging the project approvals, the Applicant shall defend, indemnify, and hold harmless the City against any and all liability, fees and costs arising out of the defense, including without limitation, Applicant shall pay for all costs of City's own selected legal counsel(s). For this purpose, "City" includes the City and its elected and appointed officials, agents, officers, employees, consultants, and volunteers.

5. Foundation/Shoring/Excavation Plan. The Property Owner shall [At the option of the Building Official, the property owner may be required to] 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.

6. Geotechnical Report and Review. The Property Owner shall [At the option of the Building Official, the property owner may 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.

7. 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.

8. Construction Management Plan. The Property Owner shall develop a comprehensive Construction Management Plan. The Construction Management Plan shall address noise, vibrations, traffic control, parking, debris removal, dust control, sanitary facilities, site safety security 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.

- b. Traffic Management Plan. Please provide a detailed traffic control plan detailing but not limited to delivery of materials, parking access for construction vehicles and workers, concrete pumps and mixers, et al. The plan shall meet all Caltrans traffic control standards.

9. **Construction Completion Schedule.** Work on the Project, once begun, shall be promptly executed with continuous good faith and reasonable progress. Since timely completion of this Project is of the essence, the Applicant 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 Applicant. The City may, at the Applicant'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 Applicant fails to meet a benchmark set forth in the Approved Construction Completion Schedule, the Applicant 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 Applicant 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 Applicant 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 Applicant 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.
- e. At least two weeks prior to start of construction, the Applicant shall provide written notice to property owners and residents of all adjacent properties on

forms provided by the Director of Building & Planning. This notification shall include information such as the start date and scope of construction, building permit number, a copy of the Construction Completion Schedule, as well as the contact information of the property owner, designer/agent, and contractor(s). The Applicant shall sign an affidavit of said notice and provide a copy to City Building Official.

Moved by Levine, Seconded by Alessio
Ayes: Alessio, Batra, Duransoy, Levine, Ramsey
Noes: None
Recused: None
Absent: None

REGULAR CALENDAR

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

Variance and Design Review Permit 109 Ronada Avenue

The Property Owners are requesting permission to remodel the residence and expand into excavated basement area, including grading of the lot on the west side and portions of the rear yard as well as other changes to the residence and landscape. A variance is required to expand the residence from three bedrooms to four bedrooms with one parking space in a single-car garage.

Public testimony was received from:

Winnie Chen, project architect, reported the house is currently a three-bedroom, 1,382-square-foot, Spanish Colonial residence located on a 5,106-square-foot flat lot with a covered single-car garage at the rear of the property. Because of a change in grade, an expansion of the garage would encroach into the rear yard setback. A variance is requested to increase the number of bedrooms to four without providing required parking. The proposal is to excavate the unconditioned basement to add a bedroom, relocate the main entrance of the home to the south facade, replace and add windows, and add a balcony on the southeast corner of the house. The building envelope will not change. Of the 194 homes located within 0.2 mile of the project site, 162 homes have three or fewer bedrooms, and 32 homes have four or more bedrooms. Two homes have four bedrooms and a single-car garage. The average size of lots located within 0.2 mile of the project site is 4,797 square feet. The unconditioned basement has a ceiling height of 6 feet 8 inches at the front of the house and transitions to a crawl space at the rear of the house. The basement has not been used for parking. The property owner has a permit to repair an interior retaining wall, and construction equipment accesses the wall through the basement. Ms. Chen advised that, according to her understanding, the current permitted work includes a new foundation and excavation. As part of the foundation work, the grade of the lot and landscaping should be restored to its previous condition. Thus, the project before the Commission does not include any changes to landscaping. Relocating the entrance will provide space for the proposed second-floor balcony, and the proposed entrance can be accessed via existing stairs. The project does not include replacement of the retaining walls along Ronada Avenue as they are thought to be in good repair.

Melissa Wilk, neighbor at 91 Ramona Avenue, stated her opposition to the relocation of the home's entrance as the proposed location will be under her main living space and only 5-10 feet away from the only entrance to her home. Ms. Wilk indicated the previous owner installed the steps closest to her property to aid mobility. The proposed entrance location will negatively affect her

privacy and quality of life and will increase noise. Large windows located in her dining room and above the proposed entrance need to be opened to reduce heat and provide airflow through her home. The existing entrance does not impact any neighbors, and on-street parking is available in front of the existing entrance. Alternatively, the entrance could be relocated to the corner of Ronada and Ramona Avenues, where there are existing stairs, without affecting her property. She indicated she has addressed her concerns, verbally and in writing, to the property owner, but he did not respond.

In response to Commissioner Ramsey's question, Ms. Chen advised that the stairs on the east side of the property will be retained, and the second set of stairs on the west side of the property will be replaced with landscaping.

Generally, Commissioners appreciated the applicant proposing a project that does not expand the home's existing envelope. However, Commissioners could not support granting a variance as only two homes of 194 homes within 0.2 mile have four bedrooms and a one-car garage, and the basement could provide parking. Commissioners Alessio and Duransoy noted the narrow driveway to the garage and the inability to expand the garage as unusual physical circumstances. Commissioners indicated relocating the entrance to the south facade should not impact the neighbor at 91 Ramona Avenue, but the entrance should be located more toward the center of the facade and could be more prominent with the use of thoughtful design and landscaping. Commissioners liked the second-floor balcony, but Commissioner Ramsey felt its proportions overpower the proposed front entrance. Commissioners agreed that the window placements need modification. Chair Levine suggested the applicant repair or replace the retaining wall along Ronada Avenue as part of the project.

Resolution 05-V/DR-20

WHEREAS, the Property Owners are requesting permission to remodel the residence and expand into excavated basement area, including grading of the lot on the west side and portions of the rear yard as well as other changes to the residence and landscape, at 109 Ronada 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 expand the residence from three bedrooms to four bedrooms with one parking space in a single-car garage; 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 not consistent with General Plan policies and procedures; and,

WHEREAS, the variance from the parking standards is denied because it does not comply with the variance criteria under Section 17.70.040.A as follows:

1. The property and existing improvements do not present unusual physical circumstances of the property, including the existing home could be remodeled without changing the existing number of bedrooms and a garage could be constructed below the existing house as demonstrated by the basement access for construction equipment, and 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. Granting a parking variance is not compatible with the immediately surrounding neighborhood and the public welfare because only two homes within 0.2 mile of the project site have four bedrooms and a one-car garage.

3. Accomplishing the improvement without a variance would not cause unreasonable hardship in planning, design, or construction because the remodel could occur as either three bedrooms or a basement garage.

WHEREAS, regarding the design review permit, the Planning Commission finds that the proposal does not conform to the criteria and standards of Section 17.66.060 of the Piedmont City Code as follows:

1. The proposed design is not consistent with the City's General Plan and Piedmont Design Guidelines. Although proposed building features are consistent with the original architecture and neighborhood development and the project will not expand the existing building envelope, the project does not have an entryway that is obvious and observable from the street, the landscaping proposed for the corner lot is not attractive, the entry path and patio are insufficient and unattractive, and the proposed building elements do not have a design consistency.

2. The design has little or no effect on neighboring properties' existing views, privacy, and access to direct and indirect light because the project will not expand the existing building envelope.

3. The proposed design does not adversely affect pedestrian or vehicular safety because the project will have no effect on existing pedestrian or vehicular safety.

4. The application does not comply with the following Design Review Guidelines and General Plan policies and programs: 3.03.02.4, 3.11.02.4, 3.11.02.5, 3.11.02 (Site Design), 4.02.01 (Building Design: General).

5. The project is not consistent with General Plan policies and programs, including the land use element, housing element, and design and preservation element.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission denies the variance application and the design review permit application for construction at 109 Ronada Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City.

Moved by Ramsey, Seconded by Batra

Ayes: Allessio, Batra, Duransoy, Levine, Ramsey

Noes: None

Recused: None

Absent: None

**Variance and Design
Review Permit
1535 Grand Avenue**

The Property Owners are requesting retroactive permission to construct a 7-foot-tall fence along Cambridge Way, a 4-foot-tall fence along Grand Avenue, a patio, and other exterior improvements. A variance is required to construct within the 20-foot street yard setback a patio area that is not necessary for ingress or egress.

Public testimony was received from:

Johannes Grohmann, Property Owner, reported the corner lot is small and triangular with little private outdoor space. Pedestrians and drivers traveling along Cambridge Way toward Grand Avenue can look into the backyard. The only private outdoor area is located in the rear setback. The existing 7-foot fencing along Cambridge Way will be replaced with a horizontal redwood fence. Given the slope of Cambridge Way, a 7-foot fence provides little privacy; however, a patio in the rear setback will have some privacy. Mr. Grohmann admitted construction of the project began without a permit based on his landscape architect's statement that a permit was not required. The previous fencing along Cambridge Way was in three segments, and the segments were located 0, 1, and 2 feet from the sidewalk. A 4-foot fence along Grand Avenue will block the view of trash bins. He indicated the adjacent neighbor on Grand Avenue agreed that fencing separating the two properties would be nice. If the 4-foot fencing is a safety concern, it can be changed or eliminated. Four trees located between the previous fencing and the sidewalk along Cambridge Way have been removed. The fencing was located in the City right-of-way, and an encroachment permit will be needed to rebuild the fencing in the City right-of-way.

The Planning Commission generally supported granting a variance given the small and irregularly shaped lot and the high volume of vehicular and foot traffic on both Grand Avenue and Cambridge Way. Commissioners preferred the fence along Cambridge Way be only 6 feet tall, have a 2-foot planting strip, and extend no further than the front of the house. Commissioner Duransoy indicated the fencing should turn toward the house at the same location as the previous fencing. Commissioners indicated the fencing at the driveway should be pulled back from the sidewalk. Alternatively, the applicant could construct a trash enclosure. Chair Levine advised that fencing along the front of the house is not appropriate because none of the other houses on the block has fences in the front. All Commissioners felt the design of the fencing should be modified to be harmonious with the design of the house.

Resolution 46-V/DR-20

WHEREAS, the Property Owners are requesting retroactive permission to construct a 7-foot-tall fence along Cambridge Way, a 4-foot-tall fence along Grand Avenue, a patio, and other exterior improvements at 1535 Grand 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 20-foot street yard setback a patio area that is not necessary for ingress or egress; and,

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

WHEREAS, the variance from the landscape requirements is approved because it complies with the variance criteria under Section 17.70.040.A as follows:

1. The property and existing improvements present unusual physical circumstances of the property, including the lot's shape and small size, the lot is

a corner lot, and a portion of the existing rear yard and patio is located in the street yard setback, so that strictly applying the terms of this chapter would prevent 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 of the neighboring properties have rear-yard patios.

3. Accomplishing the improvement without a variance would cause unreasonable hardship in planning, design, or construction because construction of a patio outside the rear yard setback would not be possible, and a patio constructed outside the rear yard setback would not be useful.

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 patio design and location.

2. The design has little or no effect on neighboring properties' existing views, privacy, and access to direct and indirect light because it provides sufficient privacy between the properties, and there is no significant view from neighboring properties.

3. The proposed design does not adversely affect pedestrian or vehicular safety because the fence along Cambridge Way will provide sufficient privacy for pedestrians and drivers.

4. As conditioned, the application complies with the following Design Review Guidelines and General Plan policies and programs: 3.09.01.1, 3.09.01.2, 3.09.02.1, 3.09.02.2, 3.09.02.3, 3.09.02.4, 3.09.03.1, 3.09.03.2, 3.09.03.3, 3.09.03.4, 3.11.01.1, 3.11.01.2, 3.11.02.1, 3.11.02.2, 3.11.02.3, 3.11.02.4, 3.11.02.5, 3.11.03.1, 3.11.03.2, 3.11.03.3, 3.11.03.4, 3.11.03.5, 3.11.03.6, 3.11.03.7, 3.11.03.8, 3.11.03.9, 3.11.03.10, 3.11.03.11, 3.11.03.12, 3.11.03.13, 3.11.03.14 (Site Design).

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 29.1 (Conserving Residential Yards), 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).

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 construction at 1535 Grand Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

1. **Contractor's General Liability Insurance.** To ensure that the contractor doing work in the City will be responsible for damages caused by the work to City property or to neighboring property, the Property Owner shall require all contractors performing work on the Project to maintain General Liability Insurance for protection from claims for damages because of bodily injury, including death, and claims for damages, other than to the contractor's work itself, to property which may arise out of or result from the contractor's operations. Such insurance shall be written for not less than \$2,000,000 per occurrence. The insurance shall include an endorsement requiring 10 days prior notice to the City if the insurance is to be cancelled or changed, and Property Owner shall immediately arrange for substitute insurance coverage. If the contractor's insurance carrier states in writing that it is unable to provide the required endorsement, Property Owner shall be responsible for providing the City with the required notice if the insurance is to be cancelled or changed. Property Owner's failure to provide such notice shall constitute grounds for revocation of the City's design review approval and/or permit. If the Property Owner does not have a general contractor, the Property Owner shall maintain property insurance and coverage for contractors, which is substantially equivalent to the contractor's requirement of this section.

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

3. **Defense of Legal Challenges.** If there is a third party administrative, legal or equitable action challenging the project approvals, the Applicant shall defend, indemnify, and hold harmless the City against any and all liability, fees and costs arising out of the defense, including without limitation, Applicant shall pay for all costs of City's own selected legal counsel(s). For this purpose, "City" includes the City and its elected and appointed officials, agents, officers, employees, consultants, and volunteers.

4. **Setback from Property Line Verification.** Prior to fence construction 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, and east 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.

5. **Encroachment Permit.** Before the issuance of a building permit, the Property Owner shall apply for an encroachment permit to allow for the construction within the public right-of-way.

6. **Construction Management Plan.** The Property Owner shall develop a comprehensive Construction Management Plan. The Construction Management Plan shall address noise, vibrations, traffic control, parking, debris removal, dust control, sanitary facilities, site safety security 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.

7. Construction Completion Schedule. Work on the Project, once begun, shall be promptly executed with continuous good faith and reasonable progress. Since timely completion of this Project is of the essence, the Applicant 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 Applicant. The City may, at the Applicant '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 Applicant fails to meet a benchmark set forth in the Approved Construction Completion Schedule, the Applicant 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 Applicant 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 Applicant 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 Applicant 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.

- e. At least two weeks prior to start of construction, the Applicant shall provide written notice to property owners and residents of all adjacent properties on forms provided by the Director of Building & Planning. This notification shall include information such as the start date and scope of construction, building permit number, a copy of the Construction Completion Schedule, as well as the contact information of the property owner, designer/agent, and contractor(s). The Applicant shall sign an affidavit of said notice and provide a copy to City Building Official.

8. Rear Fence Location and Height. The plans for the new fence enclosing the rear yard shall be modified as follows: 1) a minimum 24 inch planting strip shall be provided between the edge of the sidewalk and the fence; 2) the maximum height of the fence shall be 6 feet; and the eastern terminus of the fence shall not extend beyond the front façade of the house.

9. Left Side Yard Fence Location and Height. The fence proposed in the left (south) side yard shall be located so that it does not extend beyond the front façade of the house into the front yard, and the maximum height of the fence shall be 48 inches, enough to screen a 46-inch tall garbage cart.

10. Design of New Fencing. The design of the new fencing throughout the property shall be consistent with the traditional style of the house, subject to staff review and approval.

Moved by Alessio, Seconded by Batra

Ayes: Alessio, Batra, Duransoy, Levine, Ramsey

Noes: None

Recused: None

Absent: None

**Variance and Design
Review Permit
87 Sea View Avenue**

The Property Owners are requesting permission to remodel the residence; to expand into the excavated basement level; to replace and add doors and windows; to complete a landscape remodel including grading and fill, retaining walls, perimeter wall, new exterior lighting, new plantings; and to make other changes to the site associated with the changes to the residence and landscape. A variance is required to pave portions of the required street yard setback.

Public testimony was received from:

Justin Burden, Property Owner, reported he and his wife have been planning and modifying the project over the past two years and have shared plans with the neighbors adjacent to and across the street from his home. He noted neighbors have submitted letters in support of the project. The house is sited on the lot perpendicular to the street, and no other house in the neighborhood is sited in such a way. The 6-foot wall between the street and the side yard is original to the house and provides privacy for outdoor activities. The upper courtyard is an extension of the kitchen and used for outdoor dining. The wall and existing and proposed plantings provide privacy for the upper courtyard. The courtyard can only be expanded toward the street because of an oak tree to the north and a hill

to the south of the courtyard. A larger courtyard will provide a more useful space.

Lawrence Rugg, project architect, advised that the house is located on a down-sloped lot such that the house appears to have two stories at the front and three stories at the back. The homeowners want to increase the useable area of the lower level without expanding the building footprint or envelope, improve the layout and the level of finish, and increase the ceiling height of the lower level. To increase the ceiling height, the floor level will be lowered 18 inches. Windows and doors on the lower level will be replaced with new windows and doors either identical or similar to the existing doors and windows. The existing wood trellis outside the lower level will be replaced with a similar but more robust trellis. The trellis will define a transition space between the interior of the lower level and the exterior patio and pool decks. The wall completely shields the area between the front property line and the front yard setback from passersby.

David Thorne, landscape architect, indicated the landscape renovation will be extensive.

Kristina Kessel, landscape architect, reiterated the use of the upper courtyard as a dining and gathering space, the orientation of the house on the lot, and the insular nature of the wall and vegetation. The proposal is to enlarge the upper courtyard such that a paved strip measuring approximately 7 feet by 10 feet will be located within the setback.

In general, Commissioners felt the design is beautiful, seamless and complements the house, and the project will not impact neighbors. Commissioner Duransoy suggested the paver color match or coordinate with the color of the existing brick paver to maintain the continuity of the design. Commissioners, with the exception of Chair Levine, supported approving the variance, stating the small portion of the courtyard within the setback will be used for circulation to other parts of the garden and the variance request is reasonable. Chair Levine believed the project and program could be accomplished without a variance.

Resolution 54-V/DR-20

WHEREAS, the Property Owners are requesting permission to remodel the residence; to expand into the excavated basement level; to replace and add doors and windows; to complete a landscape remodel including grading and fill, retaining walls, perimeter wall, new exterior lighting, new plantings; and to make other changes to the site associated with the changes to the residence and landscape at 87 Sea View 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 pave portions of the required street 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 an addition to an existing private residence, because there are no unusual circumstances associated with the property or the project,

because the existing General Plan policies and programs are sufficient to address the proposed grading and construction, and because there is no substantial evidence that any exception to the Class C categorical exemption applies to this project, specifically including the unusual circumstances, and the project is consistent with General Plan policies and procedures; and,

WHEREAS, the variance from the landscape standards is approved because it complies with the variance criteria under Section 17.70.040.A as follows:

1. The property and existing improvements present unusual physical circumstances of the property, including the house is oriented toward the neighbor rather than the street, the street yard setback is wider than the garden space at the front of the house, the property was developed prior to establishment of the Zone E requirements, and, due to the slope of the property and the orientation towards the north side yard, the proposed patio is located in the only level area contiguous to the existing kitchen, so that strictly applying the terms of this chapter would prevent 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 the patio is not oversized for the location, and the existing brick wall and existing and proposed landscaping will enclose the patio.
3. Accomplishing the improvement without a variance would cause unreasonable hardship in planning, design, or construction because the proposed patio is located in the only place convenient to the kitchen given the orientation of the house; reconfiguring the floor plan to move the kitchen and patio outside the street yard setback would be a hardship in planning and design; and the hardscape that will be located within the setback is part of a circulation path.

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: paving, trellis, window and door material and fenestration pattern, window and door exterior trim design, metal railings, light sconces and entry door, and additional landscaping of the street yard setback along Sea View Avenue.
2. The design has little or no effect on neighboring properties' existing views, privacy, and access to direct and indirect light because there is no expansion of the building envelope.
3. The proposed design does not adversely affect pedestrian or vehicular safety because the driveway and pedestrian access do not change.
4. As conditioned, the application complies with the following Design Review Guidelines and General Plan policies and programs: 3.03.01.1, 3.03.02.1, 3.03.02.2, 3.03.02.3, 3.03.02.4, 3.08.01.1, 3.08.01.2, 3.08.02.1, 3.08.02.2, 3.08.03.1, 3.09.01.1, 3.09.01.2, 3.09.02.1, 3.09.02.2, 3.09.02.3, 3.09.03.3, 3.09.03.4, 3.11.01.1, 3.11.01.2, 3.11.02.1, 3.11.02.2, 3.11.02.3, 3.11.02.4, 3.11.02.5, 3.11.03.1, 3.11.03.2, 3.11.03.3, 3.11.03.4, 3.11.03.5, 3.11.03.6, 3.11.03.7, 3.11.03.8, 3.11.03.9, 3.11.03.10, 3.11.03.11, 3.11.03.12, 3.11.03.13,

3.11.03.14, 3.12.01.1, 3.12.01.2, 3.12.02.1, 3.12.02.2, 3.12.02.3, 3.12.02.4 (Site Design), 4.02.01.1, 4.02.01.2, 4.02.01.3, 4.02.01.5, 4.02.01.6, 4.02.01.7, 4.02.01.8, 4.02.01.10, 4.02.01.11, 4.03.03.1, 4.03.03.2, 4.03.03.3, 4.03.03.4, 4.03.03.5, 4.03.03.6, 4.05.02.1, 4.05.02.2, 4.05.02.3, 4.05.02.4, 4.05.02.5, 4.05.02.6, 4.05.02.7, 4.05.03.1, 4.05.03.2, 4.05.03.3, 4.05.03.4 (Building Design: General), 5.01.01.1, 5.01.01.2 5.01.02.1 (Building Design: Single-Family Residential).

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 28.8 (Acoustical and Visual Privacy), Design and Preservation Element Policy 29.1 (Conserving Residential Yards), 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), 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 construction at 87 Sea View Avenue, 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 April 2, 2020, unless modified in these conditions of approval below.
2. **Window and Door Material.** As specified in the plans, the building material for the new windows and doors shall be wood or aluminum-clad wood with true or three-dimensional simulated divided lites. The sliding type window on the north elevation at the lower level shall be replaced by an awning or casement type window, subject to staff review and approval, prior to issuance of a building permit.
3. **Window Color Scheme.** All the windows on the house shall have a consistent color scheme.
4. **Window Recess.** All new windows shall be recessed a minimum of 2 inches from the exterior wall to the face of window sash. Window details shall be submitted for review and approval at the time of Building Permit application.
5. **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 windowsill projection if any.
6. **Railings.** Final railing design shall match existing wrought-iron railings as close as practicable, subject to staff review and approval.
7. **Exterior Lighting.** All new exterior light fixtures shall be downward directed with recessed can light style or an opaque or translucent shade that completely covers the light bulb.

8. **Garage Door.** The garage doors shall be motorized. If design modifications are required to accomplish this, those modifications shall be subject to staff review.

9. **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 \$2,000,000 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.

10. **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 Planning and Building and the City Attorney, consistent with the intent of the condition.

11. **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.

12. **Defense of Legal Challenges.** If there is a third party administrative, legal or equitable action challenging the project approvals, the Applicant shall defend, indemnify, and hold harmless the City against any and all liability, fees and costs arising out of the defense. Applicant shall pay for all costs of City's own selected legal counsel(s). For this purpose, "City" includes the City and its elected and appointed officials, agents, officers, employees, consultants, and volunteers.

13. **HVAC Units.** Prior to final inspection, the applicant shall provide a noise study prepared by an acoustical engineer, or as required by the Building Official, that certifies that the noise from the HVAC units are equal to or less than 50 dbA per occurrence at the nearest property line. If the study finds that the noise level is greater than 50 dbA, then the study shall provide measures that the applicant shall take to lower the noise to 50 dbA or less, maximum per occurrence.

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. As 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 if the 2,500 square foot threshold is met 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. 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 new plantings to replace trees, hedges, and shrubs to be disturbed by construction. The final plan shall comply with Municipal Code Section 17.17.3 and shall not propose plants near the driveway that could obscure visibility of pedestrians on the sidewalk or vehicles on the street from drivers backing out of the driveway. Limestone shall be used as an accent only. The final stone color at retaining walls and paving at the patio and steps shall be non-reflective and a grey or brown earth tone color.

16. Arborist's Report and Certified Tree Preservation Plan. Before the issuance of a Building Permit, the Property Owner shall submit an Arborist's Report and Certified Tree Preservation Plan that includes tree preservation measures for the trees designated to remain on the final landscape plan such as the City-owned street trees and trees on the property lines shared with 83 and 89 Sea View Avenue. 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. The Director shall determine the number of in-lieu replacement trees that are required to replace trees proposed for removal, 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 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.

17. California's Water Efficient Landscape Ordinance: Property Owner shall comply with the requirements of California's Model Water Efficient Landscape Ordinance that went into effect January 1, 2010, 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. As required by the Building Official, 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. As required by 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 application 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 the amount of \$25,000 as established by the Director of Public Works at the time of Building Permit application submittal. 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. Construction Management Plan. The Property Owner shall develop a comprehensive Construction Management Plan. The Construction Management Plan shall address noise, vibrations, traffic control, parking, debris removal, dust control, sanitary facilities, site safety security and other potential construction impacts, as well as other details involving the means and methods of completing the Project, including the construction route. The City Building Official has the authority to require modifications and amendments to the Construction Management Plan as deemed necessary throughout the course of the Project and until the Final Inspection.

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

22. 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 Planning and Building.
- b. Before the Project begins, the Director of Planning and Building 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 Planning and Building 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 Planning and Building. 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 Planning and Building 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 Planning and Building, 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 Planning and Building, at his or her sole discretion, may refer the application to the Planning Commission for public review and direction.
- e. At least two weeks prior to start of construction, the Applicant shall provide written notice to property owners and residents of all adjacent properties on forms provided by the Director of Planning & Building. This notification shall include information such as the start date and scope of construction, building permit number, a copy of the Construction Completion Schedule, as well as the contact information of the property owner, designer/agent,

and contractor(s). The Applicant shall sign an affidavit of said notice and provide a copy to City Building Official.

Moved by Duransoy, Seconded by Alessio
Ayes: Alessio, Batra, Duransoy, Ramsey
Noes: Levine
Recused: None
Absent: None

**Variance and Design
Review Permit
365 Hillside Avenue**

The Property Owners are requesting permission to make various modifications to the property including construction of a sport court with basketball hoop and net, a patio area with outdoor kitchen, and new fencing and retaining walls; expansion of existing driveways; modification of landscaping; and construction of other exterior features. A variance is required to construct within the 20-foot street yard setback.

Public testimony was received from:

Taylor Harris, Property Owner, reported a high volume of foot and vehicular traffic passes the corner lot on the way to Piedmont Middle School and the Piedmont Recreation Department. The lot faces important public buildings and has significant elevation changes in both directions. Maintaining a landscaped area at the front of the property is key for the overall aesthetics of the adjacent public spaces, which lack setback and significant vegetation. For this and privacy reasons, the conditions of the lot suggest hardscape located at the rear of the lot would better serve all stakeholders. The dramatic elevation change between the lot and Magnolia Avenue prevents construction in the setback from unduly impacting neighbors. The proposed fencing and sport court will not significantly impact passersby because of the change in grade.

Cathy Padgett, landscape architect, advised that flow wells will be installed to retain stormwater on the property. If necessary, excess stormwater can continue to flow to the street gutter. The proposed retaining wall will be 28-30 inches tall along Magnolia Avenue. Fencing at a height of 6 feet will be constructed along the back of the property and approximately 1 foot behind the retaining wall rather than atop it. Vines and vegetation will be planted between the fencing and the retaining wall to soften both. A rock retaining wall between the subject property and the adjacent property on Hillside Avenue will be retained. The rear driveway may be smoothed to provide space for vehicles to turn around and to increase safety. Netting will be installed around the basketball hoop to prevent balls from going onto adjacent properties. The netting is retractable and comes in sections measuring 10 feet by 10 feet.

Mike Costello, neighbor at 602 Magnolia Avenue, opposed approval of the variance because the reasons for the variance do not warrant approval. In reality, the fencing will be 7-9 feet tall and 50 feet long, which is too high and too tall. The proposed fencing will increase the density of an already dense neighborhood and adversely impact the neighborhood. The sport court could be located elsewhere on the property without encroaching into a setback.

Generally, the Planning Commission, with the exception of Commissioner Alessio, could not support granting a variance because the sport court could be located elsewhere on the property such that it does not encroach into a setback and the amount of proposed paving within the setback is not compatible with neighbor properties. Commissioners, with the exception of Commissioner

Allessio, advised that the fencing along Magnolia Avenue should be no more than 4 feet tall and should be constructed 2 feet behind the retaining wall. Commissioner Allessio supported the variance and the design, indicating the proposed location is the best location for the sport court, the physical circumstances of the lot justify a variance, the fencing and vegetation will screen the backyard from pedestrians, and the proposed height for the fencing is necessary for the sport court. Commissioners requested detailed plans for improvements along contiguous properties.

Resolution 59-V-20

WHEREAS, the Property Owners are requesting a variance to construct within the 20-foot street yard setback at 365 Hillside Avenue; 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 not consistent with General Plan policies and procedures; and,

WHEREAS, the variance from the landscape requirements is denied because it does not comply with the variance criteria under Section 17.70.040.A as follows:

1. The property and existing improvements may present unusual physical circumstances of the property, but 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 because the majority of the lot is flat, there are other locations where a sport court could be constructed; and the property is a corner lot, but many Piedmont properties are corner lots and do not have sport courts located in setbacks.
2. The project is not compatible with the immediately surrounding neighborhood and the public welfare because other homes have neither a sport court nor the amount of proposed paving within the street yard setback.
3. Accomplishing the improvement without a variance would not cause unreasonable hardship in planning, design, or construction because a sport court can be constructed on the property without encroaching into the street yard setback, because the home could be used in a similar manner to other homes in the area, and because the property could be developed in a manner consistent with zoning criteria and other properties.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission denies the variance application for the construction at 365 Hillside Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City.

Moved by Ramsey, Seconded by Duransoy
Ayes: Batra, Duransoy, Levine, Ramsey
Noes: Allessio
Recused: None
Absent: None

Resolution 59-DR-20

WHEREAS, the Property Owners are requesting permission to make various modifications to the property including construction of a sport court with

basketball hoop and net, a patio area with outdoor kitchen, and new fencing and retaining walls; expansion of existing driveways; modification of landscaping; and construction of other exterior features at 365 Hillside 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, that the project excluding the sport court and netting is consistent with General Plan policies and programs, and that the proposal excluding the sport court and netting, as conditioned, conforms to the criteria and standards of Section 17.66.060 of the Piedmont City Code as follows:

1. The proposed design excluding the sport court and netting 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 upper and lower patio design, the expansion of the driveway, the outdoor kitchen design, and the exterior lighting.
2. The design excluding the sport court and netting has little or no effect on neighboring properties' existing views, privacy, and access to direct and indirect light because the distances between the project and neighboring homes are screened appropriately; the project does not impact any significant views from neighboring properties; and the topographical differences are appropriate.
3. The proposed design excluding the sport court and netting does not adversely affect pedestrian or vehicular safety because improvements to the driveway condition will improve vehicular access, no changes are proposed to pedestrian access, and the project maintains adequate visibility for entering and exiting the driveway.
4. As conditioned, the application excluding the sport court and netting complies with the following Design Review Guidelines and General Plan policies and programs: 3.08.01.1, 3.08.01.2, 3.08.02.1, 3.08.02.2, 3.08.02.3, 3.08.02.4, 3.08.02.5, 3.08.02.6, 3.08.03.1, 3.09.01.1, 3.09.01.2, 3.09.02.1, 3.09.02.2, 3.09.02.3, 3.09.02.4, 3.09.03.1, 3.09.03.2, 3.09.03.3, 3.09.03.4, 3.11.01.1, 3.11.01.2, 3.11.02.1, 3.11.02.2, 3.11.02.3, 3.11.02.4, 3.11.02.5, 3.11.03.1, 3.11.03.2, 3.11.03.3, 3.11.03.4, 3.11.03.5, 3.11.03.6, 3.11.03.7, 3.11.03.8, 3.11.03.9, 3.11.03.10, 3.11.03.11, 3.11.02.12, 3.11.03.13, 3.11.03.14, 3.12.01.1, 3.12.01.2, 3.12.02.1, 3.12.02.2, 3.12.02.3, 3.12.02.4, 3.13.02.1, 3.13.02.2, 3.13.02.3, 3.13.02.4, 3.13.03.1, 3.13.03.2, 3.13.04.1, 3.13.04.2 (Site Design).
5. The project excluding the sport court and netting 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 Element 28.6 (Exterior Materials), Design and Preservation Policy Element 29.2 (Landscape Design), Design and Preservation Policy Element 29.3 (Front Yard Enclosures), Design and Preservation Policy Element 29.4 (Maintaining Privacy), Design and Preservation Policy Element 29.5 (Fence and Wall Design), Design and Preservation Policy Element 29.6 (Retaining Walls), Design and Preservation Policy Element 29.7 (Driveway and Parking Location), Design and Preservation Policy Element 29.8 (Exterior Lighting).

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review permit application excluding the sport court and netting for construction at 365 Hillside Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

1. **Exterior Lighting.** All new exterior wall- or ceiling-mounted light fixtures shall be downward directed with an opaque or translucent shade that completely covers the light bulb. The proposed up-lights shall not be directed towards neighboring properties or towards the street.

2. **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.

3. **Defense of Legal Challenges.** If there is a third party administrative, legal or equitable action challenging the project approvals, the Applicant shall defend, indemnify, and hold harmless the City against any and all liability, fees and costs arising out of the defense, including without limitation, Applicant shall pay for all costs of City's own selected legal counsel(s). For this purpose, "City" includes the City and its elected and appointed officials, agents, officers, employees, consultants, and volunteers.

4. **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. 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.

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 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. **Optional: 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 Applicant 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 Applicant. The City may, at the Applicant '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 Applicant to meet a benchmark set forth in the Approved Construction Completion Schedule, the Applicant 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 Applicant 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 Applicant 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 Applicant 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.

- e. At least two weeks prior to start of construction, the Applicant shall provide written notice to property owners and residents of all adjacent properties on forms provided by the Director of Building & Planning. This notification shall include information such as the start date and scope of construction, building permit number, a copy of the Construction Completion Schedule, as well as the contact information of the property owner, designer/agent, and contractor(s). The Applicant shall sign an affidavit of said notice and provide a copy to City Building Official.

7. California's Water Efficient Landscape Ordinance: If the project replaces more than 2,500 square feet of landscaping, the 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.

8. Site Sections. In order to verify that adequate visual screening is provided between the subject property and the properties to the north and west, the applicant shall submit for staff review and approval site section drawings for the areas near the north and west property lines. The information provided in the drawings shall include existing and proposed grade levels and screening conditions.

9. Fence at Southwest Corner. The proposed new fencing facing Magnolia Avenue at the southwest corner of the property shall be located a minimum of 2 feet north of the proposed new retaining wall and shall have a maximum height of 4 feet measured from adjacent grade. Gates in this fence are exempt from this height limitation. The final design of the fence is subject to staff review and approval.

Moved by Ramsey, Seconded by Batra
Ayes: Allessio, Batra, Duransoy, Levine, Ramsey
Noes: None
Recused: None
Absent: None

ADJOURNMENT

There being no further business, Acting Chairman Levine adjourned the meeting at 8:05 p.m.