

PIEDMONT CITY COUNCIL

Special and Regular Meeting Minutes for Monday, September 21, 2020

Special and Regular Sessions of the Piedmont City Council were held September 21, 2020, via teleconference, consistent with Executive Orders N-25-20 and N-29-20 and the Alameda County Health Official's Order #20-04. In accordance with Government Code Section 54957(b), the agenda for this meeting was posted for public inspection on September 17, 2020.

CALL TO ORDER Mayor Bob McBain called the meeting to order at 6:03 p.m. with the Pledge of Allegiance.

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

Absent: Councilmember Betsy Smegal Andersen

Staff: City Administrator Sara Lillevand, City Attorney Michelle Marchetta Kenyon, Fire Chief Bret Black, Police Chief Jeremy Bowers, Planning & Building Director Kevin Jackson, Public Works Director Chester Nakahara, Recreation Director Chelle Putzer, Finance Director Michael Szczech, Senior Planner Pierce Macdonald-Powell, Associate Planner Gopika Nair, and Assistant City Administrator / City Clerk John Tulloch

CONSENT CALENDAR The Consent Calendar consisted of the following items:

2nd Reading of Ord. 756 N.S. Adding Fire Safety Provisions 2nd Reading of Ord. 756 N.S. Adding Fire Safety Provisions for Temporary Haunted Houses, Ghost Walks and Amusement Sites, Holiday Tree Lots, and Pumpkin Patch Lots (0705)

Joining a Coalition to Seek Review of FCC Small Cell Order and Moratoria Order Vice Mayor King appreciated the City Attorney's outstanding representation of the City because it allows the City to address issues that affect the nation. (0045, 1127)

Resolution No. 74-2020

RESOLVED, that the City Council approves the consent calendar.

Moved by Cavanaugh, Seconded by King

Ayes: Cavanaugh, King, McBain, Rood

Noes: None

Absent: Andersen

PUBLIC FORUM There was no **Public Testimony**.

REGULAR AGENDA The Council considered the following items of regular business:

Appeal of the Planning Commission's Decision for 212 Bonita Avenue Planning & Building Director Kevin Jackson introduced the appeal; reviewed the 2015 application and approval for construction at 212 Bonita Avenue; and noted the property owners abandoned the project and filed another application for construction in 2016. He indicated the 2016 application, unlike the 2015 application, did not propose construction for the existing garage and was approved, and the project has been constructed. Mr. Jackson advised that in 2020 the property owners submitted an application proposing to replace the existing garage with a two-story accessory structure. He summarized the

Planning Commission's reasons for denying the application. Mr. Jackson related the criteria for the Council's review of the appeal.

City Attorney Michelle Marchetta Kenyon clarified that the Council must make findings that the Planning Commission's decision is not supported by the weight of the evidence if it wishes to overturn the decision.

Senior Planner Pierce Macdonald-Powell utilized project plans to review the Planning Commission's findings, the bases of the appeal, and staff's recommendation.

Mayor McBain opened the public hearing.

Public Testimony was received from:

Amy Nunes, Fernanda Meagher, and Seamus Meagher supported overturning the decision because the project complies with requirements, improves privacy, does not significantly impact light for the neighbor, and enhances public safety.

Thomas Tagliarini and Alice Creason supported upholding the decision and concurred with the Planning Commission's findings.

Mayor McBain closed the public hearing.

Councilmembers discussed at length emergency access to the accessory structure, appellants' evidence, landscape along the property line, privacy and light for the neighbors, the subjective nature of some decisions, navigation of the turnaround, and the shadow study.

Resolution No. 75-2020

WHEREAS, on June 8, 2020, the Planning Commission held a public hearing to consider a proposed design review permit application to demolish the existing garage at the northeast corner of the property and construct a two-story 1,257-square-foot accessory building with garage on a 14,245-square-foot property, and at the conclusion of the public hearing, the Planning Commission denied without prejudice the application by unanimous decision; and

WHEREAS, on June 12, 2020, Seamus and Fernanda Meagher (“Applicants”) applied for a new design review permit application to demolish the existing garage at the northeast corner of the property and construct a two-story 1,257-square-foot accessory building with garage on a 14,245-square-foot property, having reduced the height of the accessory building by 3 feet, removed a portion of site steps, removed a planter, widened a garage door, and proposed both a two-stall garage option or a single-car garage option, as well as associated changes to the site; and

WHEREAS, on July 13, 2020, the Planning Commission held a public hearing to consider the revised design review permit application to demolish the existing garage at the northeast corner of the property and construct a two-story 1,257-square-foot accessory building with garage on a 14,245-square-foot property, and at the conclusion of the public hearing, the Planning Commission denied without prejudice the application by unanimous decision; and

WHEREAS, on July 23, 2020, the Applicants appealed the Planning Commission decision in accordance with Division 17.78, Appeals; Calls for

review, of the Piedmont City Code (“Appeal”), alleging that the Planning Commission’s July 13, 2020 decision was erroneous based on the grounds that: (1) “the findings made by the decisionmaker as a basis for its action are not supported by the weight of the evidence” pursuant to City Code section 17.78.040(A)(2)(a); and

WHEREAS, on September 4, 2020, 14-day public notice was duly given to the Applicants, the surrounding property owners notified in the original application hearing, the people who submitted written comments on the application or who commented in person at the hearing, and to any other person requesting notice, in accordance with Section 17.78.030 and Section 17.66.050 of the City Code; and

WHEREAS, on September 21, 2020, the City Council held a regular rescheduled public meeting wherein the City Council considered the appeal of the Planning Commission’s decision to deny the proposed project to construct an accessory building and garage at 212 Bonita Avenue; and

WHEREAS, the Appeal filed July 23, 2020, asserts that the Planning Commission disregarded evidence of the project’s conformance with zoning regulations, the age of the existing garage location, the other accessory buildings located at the rear corner of neighboring properties, and the proposed accessory building’s consistency with historical “carriage house” design. According to the Appeal, the Commission disregarded the Applicants’ statements that to relocate the accessory building and garage elsewhere on the property would require it to be located on the tallest or highest part of the property. The Appeal assert that the Commission’s discussion regarding long-term impacts to direct and indirect sunlight and privacy to future residents of 412 Blair Avenue were speculative and not factual, because the resident of 412 Blair Avenue and two other neighbors wrote letters to the Planning Commission supporting the application, and a shadow study submitted by the Applicants demonstrated no impact to direct or indirect light to the Creason property at 408 Blair Avenue. Evidence of impacts to privacy and views raised as objections by the resident of 408 Blair Avenue were without basis because there is “no direct view of (the) garage from any main part” of the Creason property, sight lines submitted with the application prove no privacy impacts, a person standing at the build site can see that there is no privacy impact, and the view from 408 Blair Avenue is not a scenic view, as defined in the Piedmont City Code; and

WHEREAS, the Appeal asserts that the Planning Commission’s finding related to vehicular and pedestrian impacts are not supported by evidence in the record because the proposed project application does not include requested modifications to the driveway. According to the Appeal, the Planning Commission disregarded the Applicants’ assertion that the only alternative design would require constructing the accessory building and garage in the front yard which would ruin the composition of the lot and be “very unattractive,” highly visible, and increase hardscape, and the Planning Commissioners disregarded the Applicants testimony that there is an abundance of existing non-conforming driveways and driveway turnaround in Piedmont; and

WHEREAS, based upon all of the evidence in the public record and after reviewing the application, plans and any and all testimony and documentation submitted in connection with such application, the City Council finds that the project does not conform to all of the required criteria and standards of Piedmont City Code section 17.66.060, as follows;

- A. The City Council finds that the proposed design is not consistent with the City's General Plan and Piedmont Design Guidelines because the project does not comply with the following:
1. The proposed accessory building and garage does not comply with General Plan Design and Preservation Element Policy 28.1: Scale, Height, and Bulk Compatibility, which states "Strengthen the defining qualities of Piedmont neighborhoods by relating the scale of new construction, additions, and alterations to existing homes and neighborhood context. Overpowering contrasts in scale and height on adjacent lots should be avoided." The proposed accessory building does not comply with this General Plan policy because it is larger than necessary for a single-car garage, and the two-story accessory building, which is 21-feet 6-inch-tall, relates inharmoniously with neighboring residences, one of which is as close as 7.2 feet to the new building, and the location of the new accessory building and garage impinges on existing landscape features.
 2. The proposed accessory building and garage does not comply with General Plan Design and Preservation Element Policy 28.5: Garages, Decks, and Porches, which states "Encourage garages, decks, and porches to complement the architecture and design of the primary residence and adjacent residences. Garages should be visually integrated with the neighborhood and respect the amenities enjoyed by residences on contiguous parcels. New garages should be sited to minimize safety impacts and should not encourage parking that blocks all or part of a sidewalk." The proposed two-car garage option does not comply with this General Plan policy because the applicant has not shown that the garage location minimizes safety impacts related to physical obstructions to a driver's ability to turnaround in the space between the garage and the main residence in order to exit the driveway in a forward motion for the safety of pedestrians and oncoming vehicles.
 3. The proposed accessory building and garage does not comply with Chapter 3.07 of the Piedmont Design Guideline, Off-street Parking and Driveway Standards, for the following reasons:
 - a. As shown on the plans, at least one of the two cars cannot maneuver in one forward and one backward movement to exit the property in a forward facing direction;
 - b. The driveway is over 100 feet long and 7.7 feet wide at its narrowest point where Chapter 3.07 specifies a maximum backup distance of 50 feet for a driveway that is less than 10 feet in width;
 - c. Car movements on the Applicant's sheets A1.3, A1.4, and A1.5 do not follow the minimum 13-foot-wide inside turning radius and 22-foot 6-inch wide outside turning radius, outlined in the Piedmont Design Guidelines Chapter 3.07, and instead show shorter turning radii, pivots, and erratic 'jogs' in the car movements in order to turn a vehicle around to exit facing forward; and
 - d. The dimensions of the turnaround space between the proposed

garage and the main residence are 22 feet 7 inches by 36 feet where the Piedmont Design Guidelines specify a minimum 34 feet wide by 44 feet 6 inches deep space for turning a car around.

- B. The City Council finds that the proposed design adversely affects pedestrian and vehicular safety because the design does not provide adequate space to turn cars around in a single forward and a single backward movement so that cars parking in the garage can exit the property in a forward-facing direction, which is necessary for the safety of pedestrians, bicyclists and vehicles in the public right-of-way. Pursuant to the Piedmont Design Guidelines Chapter 3.07, Off-street Parking and Driveway Standards, a driveway greater than 50 feet should have sufficient space to turn around with only one backward and one forward movement (page 3-30) and have a turnaround space measuring a minimum 34 feet wide by 44 feet 6 inches deep (page 3-31) and the dimensions of the turnaround space for 212 Bonita Avenue between the proposed accessory building and garage and the main residence are 22 feet 7 inches by 36 feet.

NOW, THEREFORE, BE IT RESOLVED that the City Council finds that the Applicants, as the Appellants, have not met the burden of proof that errors were made by Planning Commission or Planning & Building Department staff, pursuant to Section 17.78.040(A)(2)(a) of the Piedmont City Code, and have not proved that the Planning Commission's findings made as a basis for its action were not supported by the weight of the evidence, for the following reasons.

- A. Appellants contend that the Planning Commission erred in its determination under PMC Section 17.66.060(B), which provides that in issuing a Design Review permit, the decisionmaking body must find that project has little to no effect on neighboring properties' existing views, privacy and access to direct and indirect light. The finding requires that a project have "little to no effect." The Planning Commission found that the project has more than a little adverse effect on views, privacy, and access to sunlight. Although Mr. Rojas has registered support of the Project, there is no requirement that a finding pursuant to PMC Section 17.66.060(B) be based on neighbors' support (or opposition). The Appellants have not met the burden of proving that the Planning Commission erred in its decision pertaining to existing views and privacy, and accordingly, the finding required under PMC Section 17.66.060(B) is not met;
- B. To the extent that the Appeal raises arguments pursuant to City Code section 17.78.040(A)(2)(a), the City Council finds that the Appeal has not met the burden of proof that, regarding the project's conformance with City Code Section 17.66.060(C).
- C. The City Council finds that the Appeal's second assertion does not meet the burden of proof required by Section 17.78.040(A)(2)(a) because Appellants' arguments are without grounds. It is notable that in previous development applications on the subject property, the issue of the available turning radius was acknowledged as a concern. In the 2015 approvals, the automobile turnaround area was required to be total 25 feet 7 inches by 44 feet 6 inches. The proposed Project, however, includes a turnaround area of only 22 feet 7 inches by 36 feet.

The shortfall in turnaround space is significant because of provisions of the

Piedmont Design Guidelines. Chapter 3.07, Off-street Parking and Driveway Standards, advises a driveway greater than 50 feet should have a turnaround space measuring 34 feet wide by 44 feet 6 inches deep (page 3-31). In addition, the Piedmont Design Guidelines advise that a driveway greater than 50 feet have sufficient space to turn around with only one backward and one forward movement (page 3-30 to 30-31). The Appellants' turning study showed that a car exiting the garage in Alternative design #1 would be required to pivot and drive partially back into the garage to exit the property in one backward and one forward movement. The Appellants' turning study showed that the cars exiting the garage in Alternative design #2 had more than a single backward and forward movement to turn safely in a forward-facing direction, requiring pivots and jogs in car movements to accomplish the turns. Furthermore, the Guidelines provide that driveways greater than 75 feet should have a minimum width of 12 feet (page 3-30) while the driveway leading to the proposed new accessory building and garage is less than 8 feet wide.

In addition, the Project plan set sheets show sharp turns, pivots, and erratic car movements, including a car movement in Alternate design #1, requiring one car to drive over the parking space inside the garage to exit the property in a forward-facing direction, which are inconsistent with the 13-foot minimum inside radius and 22-foot 6-inch minimum outside radius turning movements in the Design Guidelines policies.

In addition, correspondence received from the resident of 408 Blair Avenue also raised issues with the layout of the accessory building and garage as it related to vehicle turnaround and the driveway length to the new building.

- D. The City Council finds that the Appeal's third assertion of alleged errors does not meet the burden of proof required by Section 17.78.040(A)(2)(a) because of the following reasons. Appellants assert that with respect to Piedmont Design Guidelines Section 3.07.03 and 3.07.04, the Appellants are not proposing to alter the current design of the driveway, and therefore, the Commission's deliberations and findings relative to the driveway standards and the driveway turnaround standards are not relevant to the project application. Furthermore, the Appeal asserts that if the City Council determines these standards are applicable to the Project (which is disputed by the Appeal) the turning study submitted to the City by the Applicants as part of the project application demonstrates by the weight of the evidence that the turnaround standards guidelines can be met. The Council finds that Appellants' assertions are without basis in local, state or federal law. The driveway requirements are implicated due to Appellants' proposed Project. The location of the proposed accessory building and garage, the new larger parking spaces, and the additional parking space, relate directly to the proposed vehicle turnaround and its connection to the existing driveway. That the Project itself does not propose changes to the driveway itself does not mean that the standards that apply to the Project are not applicable. In addition, the turning studies upon which Appellants rely on have deficiencies, as noted above.
- E. To the extent that the Appeal raises arguments pursuant to City Code section 17.78.040(A)(2)(a) in its fourth assertion, the City Council finds that the Appeal has not met the burden of proof that that the weight of the evidence demonstrates the proposed design of the accessory building and garage is consistent with Piedmont Design Guidelines Section 5.01.01,

Neighborhood and Contiguous Parcel Compatibility, which provides guidelines for expansions to single-family homes, including construction on steep lots, residential additions, and second-story additions. Appellants contend that the proposed accessory building and garage is compatible as there are structures with similar alignments, size, mass, and bulk in the project neighborhood, the proposed accessory building and garage aligns well with the adjacent property, and the owners of 412 Blair Avenue have testified that they find it favorable. The City Council finds that Appellants' argument is without grounds. Existing accessory buildings do not set precedent for future design review projects, as each design review permit application is reviewed on its individual merits.

- F. To the extent that the Appeal raises arguments pursuant to City Code section 17.78.040(A)(2)(a) in its fifth assertion, the City Council finds that the Appeal has not met the burden of proof regarding General Plan Design and Preservation Element Policies 28.1 and 28.5. Firstly, Design and Preservation Element Policy 28.1, Scale, Height, and Bulk Compatibility, states “Strengthen the defining qualities of Piedmont neighborhoods by relating the scale of new construction, additions, and alterations to existing homes and neighborhood context. Overpowering contrasts in scale and height on adjacent lots should be avoided.” Secondly, Design and Preservation Element Policy 28.5 states, “Encourage garages, decks, and porches to complement the architecture and design of the primary residence and adjacent residences. Garages should be visually integrated with the neighborhood and respect the amenities enjoyed by residences on contiguous parcels. New garages should be sited to minimize safety impacts and should not encourage parking that blocks all or part of a sidewalk.” Specifically, Appellants contend that the weight of the evidence shows that the proposed accessory building and garage does not overpower the adjacent structure in scale or height, and the new garage is sited to allow for a safe, forward-facing driveway exit and allows for off-street parking without blocking the sidewalk.

The City Council finds that the Appeal has not met the burden of proof required pursuant to City Code Section 17.78.040(A)(2)(a). The proposed accessory building and garage does not relate well to the buildings on adjacent lots because it is almost as tall as the existing primary residence at 412 Blair Avenue and located within 7.2 feet of the residence there, where a typical required separation between residences is at least 10 feet. The proposed accessory building and garage does not minimize safety impacts nor does it complement the landscape design of the primary residence and adjacent residences because the new accessory building and garage would crowd and conflict with the growth of the existing trees located between 212 Bonita Avenue and the property at 412 Blair Avenue. Thus, Appellants fail to meet their burden pursuant to PMC Section 17.78.040(A)(2)(a).

BE IT FURTHER RESOLVED, based on the findings and facts set forth heretofore, and the staff report and all of the evidence presented at the public hearing, the City Council denies the appeal and upholds the Planning Commission’s denial of the Design Review Permit application to demolish the existing garage at the northeast corner of the property and construct a two-story 1,257-square-foot accessory building with garage on a 14,245-square-foot property at 212 Bonita Avenue.

BE IT FURTHER RESOLVED, the above recitals are correct and are material to this Resolution and are incorporated into this Resolution as findings of the City Council. The City Council's findings are based on the staff report, this resolution, and evidence in the record.

BE IT FURTHER RESOLVED, all portions of this resolution are severable. If an individual component of this Resolution is adjudged by a court to be invalid and unenforceable, then the remaining portions will continue in effect.

Moved by Rood, Seconded by McBain

Ayes: King, McBain, Rood

Noes: Cavanaugh

Absent: Andersen

(0080)

**1st Reading of Ord.
757 N.S. - Street
Vending & Solicitors**

City Administrator Sara Lillevand reported SB 946 became effective on January 1, 2019; established statewide regulation of vending in the public sidewalks and parks; and requires cities to allow sidewalk vending. She indicated the City has historically not allowed vendor activities on public sidewalks, and the City Code does not explicitly regulate sidewalk vending. Ms. Lillevand advised that the City Attorney's Office and staff have drafted an ordinance that complies with SB 946 and establishes a program to permit and regulate sidewalk vendors. She noted the City may impose restrictions that directly relate to objective public health, safety or welfare concerns only. She added that staff has proposed revisions to Code provisions governing solicitors.

Police Chief Jeremy Bowers highlighted proposed Code provisions for street vending, including definitions, types of non-motorized conveyances, prohibitions, regulations and the permitting process. He noted proposed revisions to solicitor regulations require a background check and clarify denial of permit applications and suspension and revocation of permits.

There was no **Public Testimony** on this matter:

Councilmembers clarified the provisions for street vending in parks and commended staff for preparing an ordinance that complies with state law and meets the community's needs.

Resolution 76-2020

RESOLVED, that the City Council approves the 1st reading of Ordinance 757 N.S.

Moved by King, Seconded by Rood

Ayes: Cavanaugh, King, McBain, Rood

Noes: None

Absent: Andersen

(0705)

**COVID-19 Impact
Update**

Fire Chief Bret Black reported Fire personnel have been helping community groups and nonprofits navigate compliance with health orders, attending countywide briefings, stewarding disaster planning for Piedmont, and are collaborating with the County to activate a point of distribution (POD) model for distribution of an influenza vaccine. He indicated information about testing is available on the County Department of Public Health.

Police Chief Bowers announced the Police Department will not hold its annual trunk-or-treat event and does not recommend trick or treating this year. He noted the County Health Officer is preparing guidelines for the holidays. Police Chief Bowers indicated Community Service Officers (CSO) continue to engage the public and respond to complaints about people not wearing face masks.

Recreation Director Chelle Putzer advised that the Recreation Department is focusing on childcare, distance learning, afterschool programs, and parks. She summarized preschool and youth programs and attendance. Ms. Putzer announced Beach Playfield is open to the public for limited hours, and staff is onsite to distribute masks and encourage social distancing.

City Administrator Lillevand advised that electronic application submittals to the Planning Department is going well, and staff is exploring new software for more electronic activities. She indicated Public Works Director Chester Nakahara and Human Resources Director Stacy Jennings are preparing safety protocols for workspaces and facilities in preparation for opening buildings to the public. Ms. Lillevand noted traffic lights have been converted to touchless switches. She related that the Finance Department is tracking COVID expenses for reimbursement and administrative staff is working remotely.

Finance Director Michael Szczech added that implementation of additional modules for the financial software is going well, and implementation of all modules should be complete by mid-March 2021.

Assistant City Administrator / City Clerk John Tulloch indicated he is awaiting final guidance regarding voting locations but anticipates there will be one accessible voting location, the ballot drop box, and perhaps another location.

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

Councilmembers noted the possibility of community pushback or indoor events if Halloween events and trick or treating are canceled.
(0440)

REPORTS AND ANNOUNCEMENTS

Vice Mayor King announced that Childcare Coordinator Katrina Morris will participate in the Alameda County Leadership Academy. She also announced a fundraiser for the Wildwood Dads Club on September 24th at Zachary's Pizza.

Councilmember Cavanaugh announced the Piedmont Walk for Wellness is scheduled for September 21st-27th, the Racial Segregation in Housing in Piedmont Conversation is scheduled for September 24th, and the League of Women Voters has scheduled a measures forum for October 4th and a candidate forum for October 8th.

ADJOURNMENT

There being no further business, Mayor McBain adjourned the meeting at 9:20 p.m.