

## PIEDMONT PLANNING COMMISSION

Regular Meeting Minutes for Monday, June 14, 2021

A Regular Session of the Piedmont Planning Commission was held June 14, 2021, via ZOOM teleconference consistent with Executive Order Nos. 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 May 28, 2021.

### CALL TO ORDER

Chair Batra called the meeting to order at 5:30 p.m.

### ROLL CALL

Present: Commissioners Rani Batra, Yildiz Duransoy, Tom Ramsey, Doug Strout and Alternate Commissioner Justin Zucker

Absent: Commissioner Jonathan Levine

Staff: Planning & Building Director Kevin Jackson, Senior Planner Pierce Macdonald-Powell, Associate Planner Gopika Nair, Assistant Planner Steven Lizzarago, Administrative Assistant Mark Enea

### 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 13-PL-21**

RESOLVED, that the Planning Commission approves as presented its meeting minutes of the May 10, 2021, regular hearing of the Planning Commission.

Moved by Strout, Seconded by Ramsey

Ayes: Duransoy, Ramsey, Strout, Zucker, Batra

Noes: None

Abstaining: None

Absent: Levine

### CONSENT CALENDAR

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

- 41 Lake Avenue (Design Review and Variance Permit),
- 2071 Oakland Avenue (Design Review and Variance Permit), and
- 782 Kingston Avenue (Design Review Permit).

#### **Resolution 14-PL-21**

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

Moved by Ramsey, Seconded by Duransoy

Ayes: Duransoy, Ramsey, Strout, Zucker, Batra

Noes: None

Abstaining: None

Absent: Levine

*Commissioner Strout and Alternate Commissioner Zucker were recused from votes on 41 Lake Avenue and 782 Kingston Avenue as they have ownership interests in real properties located within 500 feet of the subject properties.*

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

**Variance and Design  
Review Permit  
41 Lake Avenue**

**Resolution 107-V/DR-21**

WHEREAS, the Property Owners are requesting permission to convert the existing carport into a detached two-car garage with a gabled roof to match the architectural style of the main house and to demolish part of the existing front-yard deck to construct stairs connecting the garage to the front entry at 41 Lake Avenue, which construction requires a design review permit; and,

WHEREAS, variances from the requirements of Chapter 17 of the Piedmont City Code are necessary to construct within the 20-foot street yard setback and the 5-foot side yard setback; and,

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

WHEREAS, variances to construct within the 20-foot street yard setback and the 5-foot side yard setback are approved because they comply 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 is unusually small, the existing carport is located within the 20-foot street yard setback and the 5-foot side 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 other homes in the area have garages located within the side yard setback and closer to the street.
3. Accomplishing the improvement without a variance would cause unreasonable hardship in planning, design, or construction because relocating the garage would require large-scale excavation and demolition.

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 size and location of the detached garage; the roof form, asphalt-shingle material, and wood wall material of the detached garage; and the door material and design of the accessory structure.
2. The design has little or no effect on neighboring properties' existing views, privacy, and access to direct and indirect light because the view is not a significant view.

3. The proposed design does not adversely affect pedestrian or vehicular safety because the project maintains adequate visibility for entering and exiting the driveway.

4. As conditioned, the application complies with the following Design Review Guidelines and General Plan policies and programs: 3.03.01.1, 3.05.01.1 (Site Design), 4.01.01.1, 4.01.01.2, 4.01.01.3, 4.01.01.4, 4.01.02.1, 4.02.01.1, 4.02.01.2, 4.02.01.3, 4.02.01.4, 4.02.01.5, 4.02.01.6, 4.02.01.7, 4.02.01.8, 4.02.01.9, 4.02.01.10, 4.02.01.11 (Building Design: General), 5.01, 5.02.01.01, 5.02.01.2, 5.02.02.1, 5.02.02.2, 5.02.02.3, 5.02.02.4, 5.02.02.5, 5.02.02.6, 5.02.03.1, 5.02.03.2 (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 28.4 (Setback Consistency), Design and Preservation Element Policy 28.5 (Garages, Decks, and Porches), Design and Preservation Element Policy 28.6 (Exterior Materials), Design and Preservation Element Policy 29.7 (Driveway and Parking Location).

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

1. **Garage Roof Color.** The proposed gabled roof shall match the color of the roof material of the main house.

2. **Garage Door.** To facilitate vehicular access, the garage door shall be motorized. If design modifications are required to accomplish this, those modifications shall be subject to staff review. In addition and in compliance with California Health and Safety Code Section 19892, an automatic garage door opener for the garage door(s) shall have a battery backup function that is designed to operate when activated in the event of an electrical outage.

3. **Defense of Legal Challenges.** The Property Owner shall indemnify, defend and hold harmless the City, its Council, Planning Commission, advisory boards, officers, employees, consultants and agents (hereinafter "City") from any claim, action or proceeding (hereinafter "Proceeding") brought against the City to attack, set aside, void or annul the City's actions regarding any development or land use permit, application, license, denial, approval or authorization, including, but not limited to, variances, use permits, developments plans, specific plans, general plan amendments, zoning amendments, approvals and certifications pursuant to the California Environmental Quality Act, and/or any mitigation monitoring program, or brought against the City due to actions or omissions in any way connected to the Property Owner's project ("Challenge"). City may, but is not obligated to, defend such Challenge as City, in its sole discretion, determines appropriate, all at Property Owner's sole cost and expense. This indemnification shall include, but not be limited to, damages, fees and/or costs awarded against the City, if any, and costs of suit, attorney's fees and other costs, liabilities, and expenses incurred in connection with such proceeding whether incurred by the Property Owner, City, and/or parties initiating or bringing such Proceeding. If the Property Owner is required to

defend the City as set forth above, the City shall retain the right to select the counsel who shall defend the City. Per Government Code Section 66474.9, the City shall promptly notify Property Owner of any Proceeding and shall cooperate fully in the defense.

**4. Setback from Property Line Verification.** Prior to inspection, the applicant shall submit to the Building Official written verification by a licensed land surveyor stating that the construction is located at the setback dimension from the south (front) 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. 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](http://cleanwaterprogram.org).
- b. **Neighboring Property Owner Permission.** Should the execution of the Foundation/Shoring/Excavation Plan require excavation into a neighboring property or if access onto the neighboring property is necessary for construction, the Applicant shall submit, prior to the issuance of Building Permit, a written statement from the neighboring property owner granting permission for access onto his/her property for the purpose of excavation and/or construction.

**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 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.

**7. Garage Door.** Prior to the issuance of a building permit, the design of the garage door shall be modified to be compatible with the architectural character of the existing house, subject to staff review and approval.

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

**Variance and Design  
Review Permit  
2071 Oakland Avenue**

**Resolution 149-V/DR-21**

WHEREAS, the Property Owners are requesting permission to demolish the existing one-car garage and trash enclosure at the southwest (front left) corner of the property and construct a new one-car garage and an attached elevator enclosure outside the 20-foot street yard setback along Oakland Avenue; construct an approximately 12-foot-wide driveway with concrete retaining walls on either side of the proposed driveway; construct on-grade stairs and new handrail; replace the existing guardrail; add exterior lighting; and make several other associated landscape and site modifications at 2071 Oakland 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 in the 5-foot left (west) side yard setback; and,

WHEREAS, after reviewing the application, plans, and any and all testimony and documentation submitted in connection with such application, and after having visited the subject property, the Piedmont Planning Commission finds that the project is categorically exempt under the California Environmental Quality Act, pursuant to CEQA Guidelines Section 15303, Class 3(e), new construction or conversion of small structures, and the project is consistent with General Plan policies and procedures; and,

WHEREAS, the variance to construct within the 5-foot side yard setback 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 because the terrain slopes steeply upward from the street, the logical siting for the new garage to minimize excavation and paving is the proposed location, 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 other homes in the area have garages in the side yard setback and closer to the street, and the project relocates the garage outside the 20-foot setback.
3. Accomplishing the improvement without a variance would cause unreasonable hardship in planning, design, or construction because constructing a one-car garage outside the 5-foot side yard setback would push the excavation close to the house such that it would undermine the house and its foundation; and constructing the garage in the rear would require removing all mature landscaping in the front and side yards, require excessive excavation, soil removal, and paving and threaten to undermine the house.

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

1. The proposed design is consistent with the City's General Plan and Piedmont Design Guidelines in that the following building features are consistent with the original architecture and neighborhood development: the wall material of the garage, the wall material of the elevator enclosure, the roof form of the elevator

enclosure, the flat roof form of the garage, the door material, and the guardrail material.

2. The design has little or no effect on neighboring properties' existing views, privacy, and access to direct and indirect light because the distances between the project and neighboring homes are appropriate and existing, the topographic differences are appropriate to preserve privacy, views, and light, and the height of the project has been kept as low as possible.

3. The proposed design does not adversely affect pedestrian or vehicular safety because the project improves onsite parking conditions, maintains adequate visibility for entering and exiting the driveway, and the new on-grade stairs, landing, and pathway improve pedestrian safety to the public way.

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, 3.05.01.1, 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, 3.11.01.1, 3.11.01.2, 3.11.02.1, 3.11.02.2, 3.11.02.3, 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, 3.12.01.2, 3.12.02.1, 3.12.02.2, 3.12.02.3, 3.12.02.4 (Site Design), 4.01.01.1, 4.01.01.2, 4.01.01.3, 4.01.01.4, 4.02.01.1, 4.02.01.5, 4.02.01.8, 4.02.01.10 (Building Design: General), 5.01.01.1, 5.01.01.2, 5.01.02.1, 5.02.01.1, 5.02.02.1, 5.02.02.2, 5.02.02.3, 5.02.02.4, 5.02.02.5, 5.02.02.6, 5.02.03.1, 5.02.03.2 (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: Lane Use Element Policy 1.3 (Harmonious Development), Housing Element Policy 6.7 (Water Conservation), Natural Resources and Sustainability Element Policy 16.4 (Permeable Pavement), Natural Resources and Sustainability Element Policy 16.5 (Hardscape Surface Standards), 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 29.1 (Conserving Residential Yards), Design and Preservation Element Policy 29.6 (Retaining Walls), Design and Preservation Element Policy 29.7 (Driveway and Parking Location), Design and Preservation Element Policy 29.8 (Exterior Lighting).

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 2071 Oakland Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

1. **Roof Color.** The proposed roofing shall match the roofing color, material and details of the existing roof of the residence to the greatest extent possible.

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

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. **Setback from Property Line Verification.** Prior to foundation inspection, the applicant shall submit to the Building Official written verification by a licensed land surveyor stating that the new carport and the retaining wall construction (west side) for the driveway is located at the setback dimension from the west property line as shown on the approved plans. The intent is to verify that the approved features are constructed at the approved dimension from the property lines.

5. **Building Height and Floor Level Verification.** Prior to foundation and/or frame inspection, the applicant shall provide the Building Official written verification by a licensed land surveyor stating that the floor level(s) and roof of the new structure(s) are constructed at the approved height(s) above grade.

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

7. **Door Material.** As specified in the plans and application material, the building material for the new doors shall be wood.

8. **Final Landscape Plan.** Before issuance of a building permit, the Property Owner shall submit for staff review and approval of a Final Landscape Plan for the side yard (west). 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. If the landscape plan for the project shows 2500 sq. ft. of new or renovated landscaping or during the course of construction more than 2500 sq. ft. of landscaped area is disturbed, the project will be required to comply with the provisions of California Water Efficient Landscape Ordinance (WELo). 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.

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

10. **Foundation/Shoring/Excavation Plan.** At the option of 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.

11. **Double Trailer Truck Prohibition.** To reduce potential damage to the streets and to avoid traffic hazards on narrow curving city streets, no double trailers shall be used as part of the Project.

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

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

13. **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](http://cleanwaterprogram.org).

b. Renovation / New Construction. Pursuant to Section 17.32.6 of the Municipal Code, if for any reason more than 70% of the physical structure (as determined by the Building Official) is demolished or destroyed, the building shall conform to new building and planning Code requirements. If this occurs during demolition, all work must stop and a new hearing and public review by the Planning Commission is required.

- c. Neighboring Property Owner Permission. Should the execution of the Foundation/Shoring/Excavation Plan require excavation into a neighboring property or if access onto the neighboring property is necessary for construction, the applicant shall submit, prior to the issuance of Building Permit, a written statement from the neighboring property owner granting permission for access onto his/her property for the purpose of excavation and/or construction.

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

- a. The Construction Completion Schedule with associated construction values for each benchmark shall set forth completion dates for the following benchmarks as needed: i) Completion of Excavation; ii) Completion of Retaining Walls; iii) Completion of Foundation; iv) Completion of Rough Framing; v) Completion of Electrical; vi) Completion of Plumbing; vii) Completion of Mechanical; viii) Completion of Fire Sprinklers; ix) Completion of Home; x) Completion of Hardscaping and Landscaping; and any further construction benchmarks and conditions of occupancy as may be determined by the Director of Public Works.
- b. Before the Project begins, the Director of Public Works shall make a determination as to the reasonableness of the proposed completion dates applicable to the Project, and that determination shall constitute the Approved Construction Completion Schedule and be binding on the Property Owner. The City may, at the Property Owner's sole cost, engage the services of a consultant to review the proposed Construction Completion Schedule and, to the extent the period allocated for any work appears unjustifiable, recommend to the Director of Public Works a reasonable completion date for any benchmark.
- c. In the event of a change in scope of the Project that would alter the benchmarks dates set forth in the Approved Construction Completion Schedule, or in the event the Property Owner fails to meet a benchmark set forth in the Approved Construction Completion Schedule, the Property Owner shall immediately submit a request to amend the Approved Construction Completion Schedule to the Director of Public Works. The request to amend shall be accompanied by a new proposed Construction Completion Schedule in compliance with subsection (a) of this condition of approval and the Director of Public Works shall evaluate the proposed amendments to the Approved Construction Completion Schedule in accordance with subsection (b) of this condition of approval.
- d. The failure of the Property Owner to comply with the Approved Construction Completion Schedule, or any amendments to it approved in conformance with subsection (d) of this condition of approval, shall constitute a nuisance under the City of Piedmont City Code ("City Code"). The failure of the Property Owner to comply with the Approved Construction Completion Schedule may result in the City pursuing administrative citations pursuant to Chapter 1 of the City Code, nuisance abatement pursuant to Chapter 6 of the City Code, or any other remedy available to the City under the law. Additionally, if the Property Owner fails to comply with the Approved Construction Completion Schedule, the Director of Public Works, at his or her sole discretion, may make a claim against the Property Owner's Site Security, if one is required, in order to

complete the benchmark. The Director of Public Works, at his or her sole discretion, may refer the application to the Planning Commission for public review and direction.

- 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.

**15. 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.

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

**17. 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.

**18. 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 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](http://cleanwaterprogram.org).

**19. Defense of Legal Challenges.** The Property Owner shall indemnify, defend and hold harmless the City, its Council, Planning Commission, advisory boards, officers, employees, consultants and agents (hereinafter “City”) from any claim, action or proceeding (hereinafter “Proceeding”) brought against the City to attack, set aside, void or annul the City’s actions regarding any development or land use permit, application, license, denial, approval or authorization, including, but not limited to, variances, use permits, developments plans, specific plans, general plan amendments, zoning amendments, approvals and certifications pursuant to the California Environmental Quality Act, and/or any mitigation monitoring program, or brought against the City due to actions or omissions in any way connected to the Property Owner’s project (“Challenge”). City may, but is not obligated to, defend such Challenge as City, in its sole discretion, determines appropriate, all at Property Owner’s sole cost and expense. This indemnification shall include, but not be limited to, damages, fees and/or costs awarded against the City, if any, and costs of suit, attorney’s fees and other costs, liabilities, and expenses incurred in connection with such proceeding whether incurred by the Property Owner, City, and/or parties initiating or bringing such Proceeding. If the Property Owner is required to defend the City as set forth above, the City shall retain the right to select the counsel who shall defend the City. Per Government Code Section 66474.9, the City shall promptly notify Property Owner of any Proceeding and shall cooperate fully in the defense.

**20. Elevator Enclosure.** Prior to the issuance of a building permit, the design of the window (fixed glazing) on the enclosure that faces Oakland Avenue shall be revised to match the style of the existing windows on the house. The final design shall be subject to staff review and approval.

**21. Design of Garage Door and Guardrail.** Prior to the issuance of a building permit, the design of the garage door and guardrail shall be revised to match the style of the house and existing guardrails throughout the property. The final design shall be subject to staff review and approval.

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

**Design Review Permit  
782 Kingston Avenue**

**Resolution 156-DR-21**

WHEREAS, the Property Owners are requesting permission to modify a 6-foot-tall screen atop a retaining wall approved by the Planning Commission at the March 8, 2021 meeting and construct an 8-foot-tall fence along the northern property line, located at 782 Kingston 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, and the project is consistent with General Plan policies and programs, and that the proposal, as conditioned, conforms to the criteria and standards of Section 17.66.060 of the Piedmont City Code:

1. The proposed design is consistent with the City's General Plan and Piedmont Design Guidelines in that the following building features are consistent with the original architecture and neighborhood development, including the fence location, height, and design; and the guardrail design.
2. The design has little or no effect on neighboring properties' existing views, privacy, and access to direct and indirect light because the proposed fence height provides sufficient privacy and more access to light on the neighboring property than the previously approved design, and there are no significant views.
3. The proposed design does not adversely affect pedestrian or vehicular safety because the project has no effect on pedestrian and vehicular safety and the proposed guardrail will maintain pedestrian safety on the pool deck.
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, 3.09.03.1, 3.09.03.2 (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 29.5 (Fence and Wall Design).

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review permit application for construction at 782 Kingston Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

1. **Defense of Legal Challenges.** The Property Owner shall indemnify, defend and hold harmless the City, its Council, Planning Commission, advisory boards, officers, employees, consultants and agents (hereinafter "City") from any claim, action or proceeding (hereinafter "Proceeding") brought against the City to attack, set aside, void or annul the City's actions regarding any development or land use permit, application, license, denial, approval or authorization, including, but not limited to, variances, use permits, developments plans, specific plans, general plan amendments, zoning amendments, approvals and certifications pursuant to the California Environmental Quality Act, and/or any mitigation monitoring program, or brought against the City due to actions or omissions in any way connected to the Property Owner's project ("Challenge"). City may, but is not obligated to, defend such Challenge as City, in its sole discretion, determines appropriate, all at Property Owner's sole cost and expense. This indemnification shall include, but not be limited to, damages, fees and/or costs awarded against the City, if any, and costs of suit, attorney's fees and other costs, liabilities and expenses incurred in connection with such proceeding whether incurred by the Property Owner, City, and/or parties

initiating or bringing such Proceeding. If the Property Owner is required to defend the City as set forth above, the City shall retain the right to select the counsel who shall defend the City. Per Government Code Section 66474.9, the City shall promptly notify Property Owner of any Proceeding and shall cooperate fully in the defense.

**2. 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.

**3. 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 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 Batra, Seconded by Ramsey  
Ayes: Duransoy, Ramsey, Batra  
Noes: None  
Recused: Strout, Zucker  
Absent: Levine

## **REGULAR CALENDAR**

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

### **Housing Policy Development Activity Update**

Senior Planner Pierce Macdonald-Powell reported on the May 19th Housing Advisory Committee meeting, results of the Fair Housing Community Survey and Pinnable Map planning tool, and new State housing regulations regarding the sites inventory and strategies to affirmatively further fair housing. Ms. Macdonald-Powell described the upcoming meeting of the Housing Advisory Committee.

Ms. Macdonald-Powell announced that on June 15<sup>th</sup>, the Housing Advisory Committee will focus on continued implementation of the current 2015 Housing Element, will review and vote on guiding principles for grant-funded programs, and will receive information regarding accessory dwelling units and objective design standards for apartment buildings.

The City received grant funding to develop programs promoting construction of accessory dwelling units and to draft design standards for apartment buildings, both of which are on the June 15<sup>th</sup> agenda for the Housing Advisory Committee. Housing Element information and resources are available at [www.PiedmontisHome.org](http://www.PiedmontisHome.org). Comments and questions may be emailed to Pierce Macdonald-Powell at [piedmontishome@piedmont.ca.gov](mailto:piedmontishome@piedmont.ca.gov).

Planning & Building Director Jackson advised that the Planning Commission's Measure A1 Bond Subcommittee met with staff from the County of Alameda and representatives of Habitat for Humanity to discuss a financial incentive program for development of accessory dwelling units that could be deed-restricted to affordable housing. In addition, the subcommittee met with local experts in affordable housing development to discuss using bond funds for a traditional multi-family affordable housing development. Following additional

research, the subcommittee will present a recommendation to the Planning Commission.

Commissioner Ramsey noted that the bond subcommittee received a broad range of information regarding affordable housing financing and development.

Commissioner Duransoy added that the bond subcommittee is learning from experts and conducting a great deal of research. In addition, Commissioner Duransoy noted that Housing Advisory Committee meetings are a good way for the public to learn about the various aspects of housing policy and to participate in planning work, and she encouraged members of the public to participate.

Director Jackson indicated that the City engaged Lisa Wise Consulting for the Housing Element Update. Over the summer, staff and consultants will develop educational information for the public, and staff will provide data and research to the consultants to prepare for sites analysis in the fall. The tentative schedule includes completion of a draft Housing Element by the end of 2021 and a final draft Housing Element in November 2022.

No **public testimony** was received.

**Variance and Design  
Review Permit  
126 Greenbank  
Avenue**

The Property Owners are requesting permission to remodel the residence and construct residential additions totaling 505 square feet of new floor area at the main level, as well as roof changes, new doors, windows, exterior lighting, and other improvements related to the project. A variance is required to construct the addition with a 43.4% structure coverage.

**Public testimony** was received from:

William Holland, project architect, reported the project is a single-story addition to the rear of the existing house. Existing vegetation along the property lines will provide privacy for the addition and neighbors. The addition will have minimal, if any, impact on neighbors and will not be visible from the street. The proposed addition will exceed the allowed structure coverage. More than 44% of properties in the immediate area exceed the allowed structure coverage. Because the project complies with other requirements and other properties exceed the allowed structure coverage, a variance is justified. On the south elevation, the roof of the addition appears to clip the dormer window, but the roof is above the gable of the window. He advised that he and the homeowners discussed building on multiple levels to decrease the addition's structure coverage, but the homeowners felt that would have a greater impact on neighbors. Reducing the overall structure coverage would result in a significantly smaller addition. Mr. Holland did not believe he could accomplish the homeowners' program in one level without exceeding the structure coverage. The setback extends 20 feet to the corner of the house. On average, the properties that exceed the structure coverage limit are roughly the same size as the subject property.

In general, Commissioners appreciated the design of the addition but could not make the findings for the variance. Commissioners indicated that there are several ways to provide the same program in a smaller area, the sizes of bedroom 3 and the kitchen could be reduced slightly, and the existing conditions could provide the programmatic needs without exceeding the structure coverage. Commissioner Duransoy noted that the slope of the addition's roof prevents the addition from appearing fully integrated into the existing structure, the transition



between the addition and existing home is not seamless, and the fenestration of doors and windows on the east elevation needs work.

**Resolution 110-V/DR-21**

WHEREAS, the Property Owners are requesting permission to remodel the residence and construct residential additions totaling 505 square feet of new floor area at the main level, as well as roof changes, new doors, windows, exterior lighting, and other improvements related to the project at 126 Greenbank 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 the addition with a 43.4% structure coverage; 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 structure coverage is not approved 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 so that 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 sizes of bedroom 3 and the kitchen could be reduced to comply with the required structure coverage.
2. The project is not compatible with the immediately surrounding neighborhood and the public welfare because the addition is too large for the lot size.
3. Accomplishing the improvement without a variance would not cause unreasonable hardship in planning, design, or construction because the size of the addition could be reduced to comply with structure coverage without impacting the function and the layout of the addition.

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 because the following building features are not consistent with the original architecture and neighborhood development: the size of the addition, the roof slope of the addition is not fully incorporated into the existing building and causes the addition to feel tacked onto the existing home, and the proposed fenestrations on the east elevation are not proportional to the facade.
2. The design 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 properties are appropriate and the height of the project has been kept as low as possible.

3. The proposed design does not adversely affect pedestrian or vehicular safety because the configuration of the garage and driveway does not change.

4. The application does not comply with the following Design Review Guidelines and General Plan policies and programs: 3.11.03.12 (Site Design), 4.02.01.10, 4.05.02.7 (Building Design: General), 5.01.02.1 (Building Design: Single-Family Residential).

5. The project is not 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 28.3 (Additions), and Design and Preservation Element Policy 29.1 (Conserving Residential Yards).

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 the construction at 126 Greenbank Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City.

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

**Design Review Permit  
20 Bellevue Avenue**

The Property Owners are requesting permission to convert the existing attached garage to living area, construct a detached two-car garage and storage building at the northeast corner of the property, rebuild and expand the existing family room on the rear of the home along with other interior changes, make window and door modifications throughout the residence, and make various hardscape and landscape improvements.

**Public testimony** was received from:

Tyler Velten, project architect, reported that the project is intended to make the house and property more accessible for a young family. A new kitchen and family room connected to the core functions of the house will replace the existing family-room addition at the rear of the house. The guest bedroom will expand into the existing garage. Replacing aging retaining walls along the east property line will improve the continuity and flow between parts of the property, increase the wall strength, and improve drainage from the upper portion of the lot. The proposed garage will facilitate secure parking. New vegetation along the east property line will provide privacy. The proposed garage's height is significantly lower than the neighboring garage. Fencing and a retaining wall prevent passage between the two garages. The foundation footing is inside the property line. The interior of the proposed garage will measure 9 feet from slab to ceiling. The house's architecture appeals to the homeowners, and they wish to utilize similar roof slopes for the proposed garage. The garage and driveway is proposed to sit two feet lower than the current grade. The proposed garage will be integrated into retaining walls, and a structural engineer will provide shoring details for construction of new retaining walls. L-shaped footings will prevent excavation into neighboring properties. The new retaining walls will be the same height as the existing retaining walls, which vary in height from 7 feet to 5 feet. While there are no records indicating the date the existing retaining walls were

constructed, they lack footings and below-grade structural support. Two trees will be removed. A geotechnical engineer will provide recommendations to ensure soil is stable following tree removal. The intent is to preserve as many plantings as possible along the retaining wall, but widening the driveway slightly may impact existing vegetation. Every attempt to preserve the existing tree will be made. A portion of the new driveway will match the patterning of the existing driveway.

Director Jackson indicated that the construction management plan addresses the staging and managing of a construction site so that it is safe and attractive. The proposed conditions of approval require a geotechnical report and review and a foundation shoring excavation plan. The Commission may recommend the applicant provide an arborist report for trees designated to remain.

The Commission generally supported the project, stating modern retaining walls will be an improvement, and the design is beautiful and integrates the garage and family room into the existing home.

**Resolution 152-DR-21**

WHEREAS, the Property Owners are requesting permission to convert the existing attached garage to living area, construct a detached two-car garage and storage building at the northeast corner of the property, rebuild and expand the existing family room on the rear of the home along with other interior changes, make window and door modifications throughout the residence, and make various hardscape and landscape improvements, located at 20 Bellevue 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, and the project is consistent with General Plan policies and programs, and that the proposal, as conditioned, conforms to the criteria and standards of Section 17.66.060 of the Piedmont City Code:

1. The proposed design is consistent with the City's General Plan and Piedmont Design Guidelines in that the following building features are consistent with the original architecture and neighborhood development, including the size and location of the proposed garage and storage structure; the roof form, slate-shingle roof material, and stucco wall material of the proposed garage and storage structure; the size, roof form, and wall material for the family room addition; the window and door materials, design, and pattern on the home and accessory structure; the retaining wall height and material; and the patio, barbeque unit, driveway, and other site features' 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 the distances between the project and neighboring homes are appropriate; the view is not a significant view; there is sufficient existing and supplemental vegetative screening; and the topographical differences are appropriate to preserve privacy, views, and light.

3. The proposed design does not adversely affect pedestrian or vehicular safety because the project has no adverse effect on pedestrian and vehicular safety, and the project maintains adequate visibility for entering and exiting the driveway.

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, 3.08.02.2, 3.08.02.3, 3.08.02.5, 3.08.02.6, 3.08.03.1, 3.11.01.1, 3.11.01.2, 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, 3.11.03.13, 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, 3.13.02.2, 3.13.02.3, 3.13.03.1, 3.13.03.2, 3.13.04.1, 3.13.04.2 (Site Design), 4.01.01.3, 4.01.02.1, 4.02.01.1, 4.02.01.6, 4.02.01.7, 4.02.01.8, 4.02.01.9, 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, 4.03.04.1, 4.03.04.2, 4.03.04.3, 4.03.04.4, 4.03.04.5, 4.03.04.6, 4.03.04.7 (Building Design: General), 5.01.01.1, 5.01.01.2, 5.01.02.1, 5.02.01.1, 5.02.01.2, 5.02.02.1, 5.02.02.2, 5.02.02.3, 5.02.02.4, 5.02.02.5, 5.02.02.6, 5.02.03.1, 5.02.03.2 (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 28.3 (Additions), 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 29.6 (Retaining Walls), Design and Preservation Element Policy 29.7 (Driveway and Parking Location), Design and Preservation Element Policy 29.8 (Exterior Lighting), Design and Preservation Element Policy 29.9 (Sight and Obstructions), Design and Preservation Element Policy 31.2 (Preserving Historic Resources), Design and Preservation Element Policy 31.3 (Context-Sensitive Design).

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review permit application for construction at 20 Bellevue Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

1. **Window and Door Material.** As specified in the plans, the building material for the new windows and doors shall be either wood, steel, or wood-clad metal.
2. **Window Color Scheme.** All the windows on the house shall have a consistent color scheme.
3. **Window Recess.** All new windows shall be recessed 4.75 inches from the exterior wall to the face of window sash in order to maintain consistency with the original architecture, as required by the City's Design Guidelines and Window Replacement Policy. Window details shall be submitted for review and approval at the time of building permit application.
4. **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.

5. **Roof Color.** The proposed asphaltic membrane roof between the family room and main residence shall be a color that matches the sloped roof of the house to minimize the visual impact on upslope properties.

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

7. **Garage Door.** To facilitate vehicular access, the garage door shall be motorized. If design modifications are required to accomplish this, the modifications shall be subject to staff review. In addition and in compliance with California Health and Safety Code Section 19892, an automatic garage door opener for the garage door(s) shall have a battery backup function that is design to operate when activated in the event of an electrical outage.

8. **Driveway Gate.** The driveway gate shall be motorized to facilitate vehicular access.

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 Public Works and the City Attorney, consistent with the intent of the condition.

11. **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.

12. **Double Trailer Truck Prohibition.** To reduce potential damage to the streets and to avoid traffic hazards on narrow curving city streets, no double trailers shall be used as part of the Project.

13. **Defense of Legal Challenges.** The Property Owner shall indemnify, defend and hold harmless the City, its Council, Planning Commission, advisory boards, officers, employees, consultants and agents (hereinafter "City") from any claim, action or proceeding (hereinafter "Proceeding") brought against the City to attack, set aside, void or annul the City's actions regarding any development or

land use permit, application, license, denial, approval or authorization, including, but not limited to, variances, use permits, developments plans, specific plans, general plan amendments, zoning amendments, approvals and certifications pursuant to the California Environmental Quality Act, and/or any mitigation monitoring program, or brought against the City due to actions or omissions in any way connected to the Property Owner's project ("Challenge"). City may, but is not obligated to, defend such Challenge as City, in its sole discretion, determines appropriate, all at Property Owner's sole cost and expense. This indemnification shall include, but not be limited to, damages, fees and/or costs awarded against the City, if any, and costs of suit, attorney's fees and other costs, liabilities and expenses incurred in connection with such proceeding whether incurred by the Property Owner, City, and/or parties initiating or bringing such Proceeding. If the Property Owner is required to defend the City as set forth above, the City shall retain the right to select the counsel who shall defend the City. Per Government Code Section 66474.9, the City shall promptly notify Property Owner of any Proceeding and shall cooperate fully in the defense.

**14. Setback from Property Line Verification.** Prior to the foundation inspection, the applicant shall submit to the Building Official written verification by a licensed land surveyor stating that the construction is located at the setback dimension from the north and east property lines as shown on the approved plans. The intent is to verify that the approved features are constructed at the approved dimension from the property lines.

**15. Sewer Main Condition and Repair.** City records indicate that City storm and sewer mains and associated easement(s) are located at the very rear of the adjacent property at 453 Mountain Avenue, a location that is near the rear of the proposed construction of the new garage and storage structure. Prior to the issuance of a building permit, the Property Owner shall submit a revised copy of the site plan or survey to show sewer manhole covers and any easements. Said easements and manhole covers shall also be shown on the building permit drawings. The applicant shall also work with City staff verify the location and depth of the storm and sanitary sewer mains in this location. In addition, the City shall videotape the existing sanitary and storm sewer mains to assess their pre-construction condition in order to make a determination as to whether any repairs to or replacement of the sewer main is required prior to the commencement of excavation and/or construction. (The City is responsible for the cost of the main line, and the property owner for costs of the lateral.) As part of the final inspection the same sanitary and storm sewer lines shall be inspected as required by the Director of Public Works, who shall also determine if the sewer lines were damaged as a result of the construction and therefore must be repaired at the applicant's expense. The applicant is responsible to locate their private sewer lateral and note such location on the building permit drawings.

**16. Final Landscape Plan.** Before issuance of a building permit, the Property Owner shall submit for staff review and approval a Final Landscape Plan that shows trees proposed for retention as well as in-lieu replacement trees. The final plan shall comply with City Code Division 17.34 and Section 17.33.30, and shall not propose plants near the driveway that could obscure visibility of pedestrians on the sidewalk or vehicles on the street from drivers backing out of the driveway. The applicant shall also plant vegetative screening between the new garage and the east (rear) property line to ensure sufficient privacy between the neighboring properties. Upon the determination of the Director, minor differences in the number, size and/or species of vegetation between those

shown on the approved landscape plan and those installed at the time of final inspection that do not involve an increase in hardscape or structure coverage may be subject to staff review and approval. Significant differences between the vegetation installed at the time of final inspection and vegetation shown on the approved landscape plan are subject to a design review permit.

**17. Foundation/Shoring/Excavation Plan.** At the option of 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.

**18. Geotechnical Report and Review.** 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.

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

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

**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 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 Planning and Building Department and online at [cleanwaterprogram.org](http://cleanwaterprogram.org).

**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 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.

**23. California’s Water Efficient Landscape Ordinance:** If the Property Owner disturbs over 2,500 square feet of landscaped area, 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.

**24. Driveway.** The applicant shall replace the existing driveway with a design that is complementary with the existing conditions, including the driveway color, texture, and finish. The driveway design is subject to staff review and approval.

**25. Arborist’s Report and Certified Tree Preservation Plan.** Before the issuance of a building permit, the Property Owner shall submit an Arborist’s Report and Certified Tree Preservation Plan that includes tree preservation measures to preserve all trees proposed to be retained within proximity of

construction. The tree preservation measures shall be on the appropriate sheets of the construction plans. The arborist shall be on-site during critical construction activities, including initial and final grading, to ensure the protection of the existing trees that are intended to be retained. The arborist shall document in writing and with photographs the tree protection measures used during these critical construction phases. If some trees have been compromised, mitigation measures must be specified in writing, and implementation certified by the Project Arborist. Trees proposed for removal shall have an in-lieu replacement tree planted elsewhere on the property, which shall be shown on 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.

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

**Variance Permit  
1133 Winsor Avenue**

The Property Owners are requesting a variance to create a fourth bedroom without providing the required number of parking spaces.

**Public testimony** was received from:

Paul Wallace, Property Owner, reported the project adds a shower to an existing half bath on the basement level. This change will cause the adjacent office to count as a bedroom, which increases the total number of bedrooms to four. There is not sufficient space on the main level of the house to add a bathroom. Adding a bathroom to the second floor would result in one very small bedroom and the removal of windows. The garage provides one parking space, and no other space on the property is available for parking. The project will not alter the exterior of the home or affect neighbors' views, privacy, or access to direct and indirect light. There are 24 homes on Winsor Avenue between Wildwood Avenue and Park View Avenue, 19 of which have three or four bedrooms and range in size from 1,500 square feet to 2,800 square feet. Fifteen of the 19 homes have two or more bathrooms. Seventeen of the 19 homes have a one-car garage; 10 of the 19 homes have one off-street parking space in the garage. The subject home contains 2,300 square feet, three bedrooms, and 1½ bathrooms. Enlarging the garage for a second car would require re-engineering and changing the front of the house, the main floor layout, and the stairs to the second floor. Adding a bath to the second floor would be more complicated and more expensive than the proposed project. Approximately half of the 19 homes have four bedrooms.

Director Jackson advised that the width of the one-car garage does not comply with code requirements. If the Commission denies the variance, the Property Owners could submit a building permit application to create a full bath on the basement level and an opening between the office and remaining basement area such that the office does not count as a bedroom.

Generally, the Commission appreciated the need for a second full bathroom but did not support the variance because the project would increase the existing

nonconformity and on-street parking and could be accomplished without a variance.

**Resolution 154-V-21**

WHEREAS, the Property Owners are requesting a variance to create a fourth bedroom without providing the required number of parking spaces at 1133 Winsor Avenue, which conversion requires a variance permit; and,

WHEREAS, after reviewing the application, plans, and any and all testimony and documentation submitted in connection with such application, and after having visited the subject property, the Piedmont Planning Commission finds that the project is not consistent with General Plan policies and procedures; and,

WHEREAS, the variance to create a fourth bedroom without providing required parking for a single-family residence is not approved 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 so that 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. The variance is not compatible with the immediately surrounding neighborhood and the public welfare because adding a bathroom could be accomplished without the need for a variance, specifically by either dividing an existing upstairs bedroom into two bathrooms and moving one wall or extending the existing opening for the basement office to the existing wall of the mechanical room in plan and extending the vertical dimension of the existing opening to the ceiling.
3. Accomplishing the improvement without a variance would not cause unreasonable hardship in planning, design, or construction because the project can be accomplished without a variance and cost is not a factor in determining hardship.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission denies the variance application for the conversion at 1133 Winsor Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City.

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

**Design Review Permit  
403 Moraga Avenue**

The Property Owner is requesting permission to construct a multilevel deck and stair structure at the rear of the residence.

**Public testimony** was received from:

Andrew Champion, Property Owner, proposed a new deck with a spiral stair in his back yard. The deck will provide a view of the Bay and Mountain View Cemetery. The design addresses each point contained in a letter denying a previous application for a deck. The spiral stair provides access to all decks and

a secondary egress. Wood framing and railing adds structural stability to the stair, shields the curved form from view, matches existing decks, and reflects the downward slope of railings at existing steps. The height and length of the proposed deck have been reduced to minimize the appearance of bulk. The parapet wall will express the angular features of the home. The roof parapet is integrated into the house through the use of similar materials and style of construction and mirrors the roof extension at the front of the house. The parapet wall directs views from the proposed deck away from neighboring homes.

Ben Newcomb, project designer, advised that the homeowner's goal is a view of Mountain View Cemetery. The deck and stair are integrated into the existing house. The height of the parapet wall cannot be reduced.

Generally, Commissioners liked the stair concept and the wood guardrail matching the existing deck guardrail. However, Commissioners indicated that the parapet at the rear feels tacked on and needs to be integrated with the roof, the parapet wall will be too visible from the street, metal behind the screen will remain visible, the parapet is not compatible with the house or neighborhood, and the spiral stair needs to blend better with the railing system. The Commission discussed potential design modifications and whether the modifications required staff or Commission approval.

**Resolution 155-DR-21**

WHEREAS, the Property Owner is requesting permission to construct a multilevel deck and stair structure at the rear of the residence located at 403 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, and the project is consistent with General Plan policies and programs, and that the proposal, as conditioned, conforms to the criteria and standards of Section 17.66.060 of the Piedmont City Code:

1. The proposed design is consistent with the City's General Plan and Piedmont Design Guidelines in that the following building features are consistent with the original architecture and neighborhood development, including the spiral staircase material and design, and the deck structure, height, and location.
2. The design has little or no effect on neighboring properties' existing views, privacy, and access to direct and indirect light because the distances between the property and neighboring homes are appropriate, and the view is not a significant view.
3. The proposed design does not adversely affect pedestrian or vehicular safety because the project has no adverse effect on pedestrian and vehicular safety.
4. As conditioned, the application complies with the following Design Review Guidelines and General Plan policies and programs: 3.03.01.1 (Site Design), 4.02.01.3, 4.02.01.4, 4.02.01.5, 4.02.01.7, 4.02.01.10 (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 28.3 (Additions), 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 28.7 (Hillside Home Design), Design and Preservation Element Policy 31.3 (Context-Sensitive Design).

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review permit application for construction at 403 Moraga Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

1. **Defense of Legal Challenges.** The Property Owner shall indemnify, defend and hold harmless the City, its Council, Planning Commission, advisory boards, officers, employees, consultants and agents (hereinafter "City") from any claim, action or proceeding (hereinafter "Proceeding") brought against the City to attack, set aside, void or annul the City's actions regarding any development or land use permit, application, license, denial, approval or authorization, including, but not limited to, variances, use permits, developments plans, specific plans, general plan amendments, zoning amendments, approvals and certifications pursuant to the California Environmental Quality Act, and/or any mitigation monitoring program, or brought against the City due to actions or omissions in any way connected to the Property Owner's project ("Challenge"). City may, but is not obligated to, defend such Challenge as City, in its sole discretion, determines appropriate, all at Property Owner's sole cost and expense. This indemnification shall include, but not be limited to, damages, fees and/or costs awarded against the City, if any, and costs of suit, attorney's fees and other costs, liabilities and expenses incurred in connection with such proceeding whether incurred by the Property Owner, City, and/or parties initiating or bringing such Proceeding. If the Property Owner is required to defend the City as set forth above, the City shall retain the right to select the counsel who shall defend the City. Per Government Code Section 66474.9, the City shall promptly notify Property Owner of any Proceeding and shall cooperate fully in the defense.

2. **Building Height and Floor Level Verification.** At the option of the Building Official, prior to deck frame inspection, the applicant shall provide the Building Official written verification by a licensed land surveyor stating that the floor level(s) and roof of the new deck and parapet are constructed at the approved height(s) above grade.

3. **Arborist's Report and Certified Tree Preservation Plan.** Before the issuance of a building permit, the Property Owner shall submit an Arborist's Report and Certified Tree Preservation Plan that includes tree preservation measures to preserve the existing tree located immediately north of the deck structure. The tree preservation measures shall be on the appropriate sheets of the construction plans. At the option of the Building Official, 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 the tree is

compromised, mitigation measures must be specified in writing, and implementation certified by the Project Arborist. Trees proposed for removal shall have an in-lieu replacement tree planted elsewhere on the property, which shall be shown on the final landscape plan. Replacement tree size is subject to staff review, and shall be commensurate with the size and numbers of trees to be removed. They shall generally be a minimum of 24" box size. Before the Final Inspection, the 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.

**4. 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.

**5. 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.

**6. Top Level Deck Design.** The applicant shall refine the design of the uppermost level deck so that it is more integrated with the wall, windows, eave and roofline of the existing residence and complementary with the existing architecture of the home. The final design is subject to staff review and approval.

Moved by Strout, Seconded by Duransoy

Ayes: Duransoy, Strout, Batra

Noes: Ramsey, Zucker

Recused: None

Absent: Levine

**ADJOURNMENT**

There being no further business, Chair Batra adjourned the meeting at 7:58 p.m.