

PIEDMONT PLANNING COMMISSION

Regular Meeting Minutes for Monday, December 13, 2021

A Regular Session of the Piedmont Planning Commission was held on Monday, December 13, 2021, via ZOOM teleconference, in accordance with Government Code Section 54953. The agenda for this meeting was posted for public inspection on November 29, 2021, in accordance with the General Code Section 54954.2 (a).

- CALL TO ORDER** Chair Rani Batra called the meeting to order at 5:31 p.m.
- ROLL CALL** Present: Commissioners Rani Batra, Yildiz Duransoy, Jonathan Levine, Tom Ramsey, Douglas Strout, and Justin Zucker
- Absent: None
- Staff: Planning & Building Director Kevin Jackson, Senior Planner Pierce Macdonald, Associate Planner Gopika Nair, Assistant Planner Steven Lizzarago, Planning Technician Suzanne Hartman, Administrative Assistant Mark Enea
- PUBLIC FORUM** There were no speakers for the public forum.
- EX PARTE COMMUNICATIONS & CONFLICTS OF INTEREST** Chair Batra had a conflict of interest with 5 Sotelo Avenue and recused herself from the discussion.
- REGULAR SESSION** The Commission considered the following items of regular business.
- CONSENT CALENDAR** No applications were placed on the consent calendar.
- REGULAR CALENDAR** The Commission considered the following items as part of Regular Calendar:
- Housing Policy Development Activity Update** Senior Planner Pierce Macdonald provided an update on Measure A-1, SB-2 new housing programs, and Housing Element update related to the development of new fair housing policy.
- Measure A-1 makes \$2.2 million available for affordable housing. The City of Piedmont sent a request for an extension until December 2023 and the Alameda County Board of Supervisor’s public hearing, on the extension, is expected by March 2022.
- The recommendations and discussions on requirements, for the SB-2 new housing programs have already started. Objective design standards need to be developed. A financial feasibility analysis was prepared for two potential development sites in Piedmont. High-quality context sensitive accessory dwelling unit (ADU) designs need to be developed, as well as incentives to facilitate new ADUs. A virtual community workshop was held on October 21, 2021. After reviewing the public comments, it’s expected that revision will be made to the objective design standards, preapproved plans, and ADU incentives. The public hearings are expected to begin in February 2022. The public draft is available to view at <http://PiedmontisHome.org>.
- In regard to the Housing Element update, there will be events and opportunities for the members of the public to participate. In March 2022 through June 2022, there will be a public review draft that will include new sites, and existing and new housing programs. Public comment is welcome. This Housing Element update project timeline has been extended through Spring 2023.

Planning & Building Director Kevin Jackson shared answers to the frequently asked questions (FAQ). The City Council did not file an appeal to the Regional Housing Needs Allocation (RHNA) because a successful appeal would have been highly unlikely, and our efforts should focus on the development of housing. Staff had submitted several letters expressing concerns to the Association of Bay Area Governments (ABAG), and California Department of Housing and Community Development (HCD). Most of the appeals filed in the Los Angeles and San Diego regions were denied. RHNA does not require the City of Piedmont to build housing, but the City has to ensure that the zoning capacity exists to build housing. Housing Elements are not approved by community-wide vote. The elected City Council has the authority and responsibility to adopt the housing element. Further information and FAQs are on project website <http://PiedmontisHome.org>.

The Housing Element Community Workshop #1 was held on December 2, 2021. The presentation included initial findings, population and demographics data, preliminary constraints and housing needs analysis, and the summary of the focus group that was conducted in July 2021. The information was presented to encourage sharing ideas and communication during small group discussions. Some of the findings were that approximately one-fifth of households in Piedmont are cost-burdened, special housing groups are more likely to face housing challenges, and there are limited opportunities for multi-family or residential mixed-use development. The community small group workshop discussion has been extended, in order to give feedback, with a survey on <http://PiedmontisHome.org> and the information is also presented in additional languages.

Please send comments and ideas to Senior Planner Pierce Macdonald at: [Piedmontishome@piedmont.ca.gov](mailto:Piedmontishome@piedmont.ca.gov).

There was no **public testimony**.

**Piedmont Community  
Pool Presentation**

Planning & Building Director Kevin Jackson introduced President/CEO Clarence Mamuyac, Jr. and the design team, from ELS Architecture and Urban Design (ELS). They provided an update and slideshow on the activities related to the development of a design, for the Piedmont Pool.

Mr. Mamuyac presented the slideshow for Piedmont Community Pool Workshop 2, which took place on November 16, 2021. It consisted of recap of Workshop 1, background about ELS, shared three site plans for new aquatic center, and the ELS team was introduced. Pictures were provided of other pool/aquatic centers that ELS has designed. ELS signed on for the 2030 architecture commitment to make all new buildings and renovations carbon neutral.

The top two results from Workshop 1 were programming for pools and green design. The top two priorities for the pool were multi-use and more lanes. The vision for the project will consist of community, ecology, and delight.

Three concepts were unveiled for the master plan, at the workshop. Participants at the workshop designated - Concept 3 as the favorite, to which Mr. Mamuyac agreed. Workshop 3 will be held on December 14, 2021, which will consist of a refined version of Concept 3. The final Conceptual Plan Presentation will be held on December 16, 2021.

Mr. Mamuyac. addressed the concerns of the Commissioners. The L-shape consists of a big extension off of the roof area, over patio area, and the area will be maximized. There will also be more covered outdoor area. The pool design will be

compatible and consistent with the City of Piedmont because it connects and fits with the neighborhood, by not competing and not being too much.

As for the scale of the building, one of the section drawings shows the cut from Bonita Avenue all the way through and down to Hillside Avenue, which is a 30-foot drop. The aquatics center cascades down the hill and transitions in to park.

For more information, community members can visit [www.piedmont.ca.gov](http://www.piedmont.ca.gov).

There was no **public testimony**.

**Fence Design Review  
Permit, 150 Olive  
Avenue, #21-0312**

The Property Owners are requesting retroactive approval for relocating a metal gate into the 20-foot street yard setback.

**Public testimony** was received from:

Nian Peng Shi, Property Owner, stated that he and his wife relocated a gate eight feet from the front of the property line adjacent to their garage. They wanted this gate for safety and security. They get a lot of non-residents that park on their street and that visit the Rose Garden across the street from their home. They are also located close to Oakland Avenue and get various activities that happen near their home, such as people smoking marijuana and break-ins. Other neighbors on their block have similar gates as well.

The Planning Commission concluded that the gate did not meet the Piedmont Design Guidelines due to the gate height and location.

**Resolution 312-FDR-21**

WHEREAS, The Property Owners are requesting retroactive approval for relocating a metal gate into the 20-foot street yard setback located at 150 Olive Avenue, which construction requires a fence 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 was inconsistent with General Plan policies and programs, and 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 in that the proposed gate is not consistent with the existing architecture of the home and neighborhood development, and the fence height is greater than 4 feet.
2. The design has little or no effect on neighboring properties' existing views, privacy, and access to direct and indirect light
3. The proposed design does not adversely affect pedestrian or vehicular safety
4. The application does not comply with Piedmont Design Guidelines 3.09.01.1, 3.09.02.2, and 3.09.02.3;
5. The application does not comply with the City's General Plan Design and Preservation Policies 29.3 (Front Yard Enclosures) and 29.5 (Fence and Wall Design).

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission denies without prejudice the design review permit application for the construction at 150 Olive Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City.

Moved by Ramsey, Seconded by Levine  
Ayes: Duransoy, Levine, Ramsey, Strout, Batra  
Noes: None  
Abstain: None

**Fence Design Review  
Permit, 5 Sotelo  
Avenue, #21-0324**

The Property Owners are requesting retroactive approval for the installation of a mesh fence located within the 20-foot street yard setback.

**Public testimony** was received from:

Ervin Epstein Jr., Property Owner, stated that the front of the house had become an eyesore that was embarrassing, due to the deer eating the ivy. It was decided to plant an English Laurel Hedge. In order to prevent the deer from eating the new plants, a wide mesh fence was installed in front of the new plants, knowing that leaves would be produced from the hedge and poke through the fence. The fence would therefore be hidden, and the deer would only have bits of leaves to chew. Despite not knowing that approval was needed, Mr. Epstein believes that the hedge is in accordance with the neighborhood and enhances the value of the homes and appearances.

The Commissioners were in agreement that the design of the mesh fence was not appropriate because it does not meet the design review criteria in terms of materials and location. Front yard fences of this design are not allowed.

**Resolution 324-FDR-21**

WHEREAS, The Property Owners are requesting to install a mesh fence located within the 20-foot street yard setback located at 5 Sotelo Avenue, which construction requires a fence 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 was inconsistent with General Plan policies and programs, and 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 in that the proposed height, choice of materials, and location within the 20-foot street yard setback are contrary to the standard for approval.
2. The design has little or no effect on neighboring properties' existing views, privacy, and access to direct and indirect light.
3. The proposed design does not adversely affect pedestrian or vehicular safety.
4. The application does not comply with Piedmont Design Guidelines 3.09.01.1, 3.09.02.2, and 3.09.02.3;
5. The application does not comply with the City's General Plan Design and Preservation Policies 29.3 (Front Yard Enclosures) and 29.5 (Fence and Wall Design).

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission denies without prejudice the design review permit application for the construction at 5 Sotelo Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City.

Moved by Levine, Seconded by Zucker  
Ayes: Duransoy, Levine, Ramsey, Strout, Zucker,  
Noes: None  
Abstain: None

**Conditional Use Permit  
and Design Review  
Permit, #21-0334 &  
#21-0335**

Applications for conditional use permit and design review permit have been submitted by Piedmont Shell Auto Care, 29 Wildwood Avenue. The applications propose to modify the site and the existing conditional use permit to include the addition of an accessory structure to the east of the existing auto shop and associated exterior electrical hook-ups; modify previously approved parking counts; and make several other associated interior and exterior changes, including window and door modifications on the west facade.

**Public testimony** was received from:

Jeffery Hansen, Owner/Operator, requested to install a container for at least one year to be used when cleaning out service bays, removing hydraulic lifts that have been in place since 1959, and for converting a portion of the existing building to a retail store. The soil also needs to be remediated for potential residential development. The container has been there for approximately three to four months. A portion of this application was previously approved but had expired. Architect, Todd Stimpson, added that the container is temporary while the projects are being worked on.

Associate Planner Gopika Nair clarified that the existing permitted operation hours for the office and auto repair service was 6 a.m. to 10 p.m. Director Kevin Jackson stated that there was a narrow focus to what the Commission was being asked to consider: first a design review permit application to make the window and door modifications and to construct the detached storage building, and second, a modification to the current Conditional Use Permit to operate a convenience store, and to make the structural changes related to the detached storage building. Director Jackson added that design review and conditional use permits always run with the land and do not differentiate between temporary and permanent structures, as a structure is always considered permanent. The correct place to seek an approval for the temporary storage shed would be a building permit application.

Don Dare, neighbor at 31 Wildwood Avenue, expressed that he and his wife do not approve of the snack store or the unpermitted storage container on-site. They also disapproved of additional CUP's for a business that has failed to honor previous commitments and operates in violation of numerous city codes, including: operation hours of gas pumps, illegal parking on sidewalks, discharge of pollutants into the drain, working on cars on the sidewalks and grease spillage. He also suggested there should be specific times set for the different uses within Shell.

Malcolm Talcott, neighbor at 22 Wildwood Avenue, expressed that some things haven't been dealt with as well as they should have been, at Shell Gas Station, and that is disappointing. Malcolm has no objections to the operation of the convenient store or the modifications. In general Malcolm expressed support for the temporary container provided proper permits were obtained by the owner. He suggested that specific times be set for the different businesses within Shell and requested that it

should be required for the gas station to be staffed when the gas station gets refueled, and for refueling not to be performed after hours.

The Commissioners recommend approval of the modification to the Conditional Use Permit to allow for the operation of a convenience store, and the Design Review Permit for the window and door modifications on the west façade necessary for the store. This use and construction was approved by staff and the City Council in 2020 but those permits expired because no building permit was submitted or issued. They further added that the convenience store operation hours be limited to 8 a.m. - 8 p.m., Monday-Sunday. The Commissioners recommend denial of the design review permit and modification to the conditional use permit for the temporary detached storage structure. The commission found that the design of the structure did not meet the standards for approval, but more importantly a design review permit is the wrong regulatory vehicle for gaining approval of a temporary structure needed during construction as the application indicates. support the previously submitted modification of the Conditional Use Permit, CUP, for the store and the design review associated with that. Separate out the design review for the shipping container and deny with prejudice. The applicant needs should be encouraged to make the temporary container part of the construction management plan when applying for a building permit application. The neighbors do have a legitimate complaint about noise.

**Resolution 334-DR-21**

WHEREAS, Piedmont Shell Auto Care is requesting to make window and door modifications on the west façade of the service building, 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 recommends that the project is categorically exempt under the California Environmental Quality Act, CEQA, pursuant to Section 15301, Class 1(a), existing facilities, and is consistent with general programs and policies, and that the proposal, as conditioned, to window and door modification for the retail store design, 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 of Piedmont’s Design Guidelines, and the following building features are consistent with the original architecture and neighborhood development: the window material, the window operation and location, and the wall material.
2. The design of the retail tenant improvement and exterior window and door modifications has little or no effect on neighboring properties' existing views, privacy, and access to direct and indirect light.
3. The proposed design of the window and door modification does not adversely affect pedestrian or vehicular safety.
4. As conditioned, the application for only the window and door modifications complies with the following guidelines and the City’s General Plan Policies and Programs Chapter 4 Building Design 4.03 (New Replacement Windows) and Design and Preservation Policy 28.6 (Exterior Materials).

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission recommends approval, of the window and door modifications related to the retail store, by the City Council of the conditional use permit

application by Piedmont Shell Auto Care for 29 Wildwood Avenue, Piedmont, California, in accordance with the following applicable conditions:

1. Approved Plans. The approved plans are those submitted on December 1, 2021, after neighbors were notified of the project and the plans were available for public review. However, the scope of the approved project includes the exterior window and door modifications and interior modifications related to the convenience store. The approved project does not include the proposed accessory structure and related electrical hook-ups.
2. Window and Door Material. As specified in the plans, the building material for the new windows shall be aluminum storefront.
3. Window Color Scheme. All the windows on the building shall have a consistent color scheme.
4. Window Recess. All new windows shall be recessed 3 ¼ 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.
5. Pre-construction Inspection. After the issuance of a building permit and prior to the commencement of window fabrication, the installer shall schedule a pre-construction inspection with the Building Department. The inspection will review the approved installation criteria, noted on the approved building permit drawings and specifications, such as the window recess, window trim if any, and windowsill projection if any, with the existing conditions.
6. Construction Management Plan. The Property Owner shall develop a comprehensive Construction Management Plan. The Construction Management Plan shall address noise, vibrations, traffic control, parking, debris removal, dust control, sanitary facilities, site safety security emergency access, and other potential construction impacts, as well as other details involving the means and methods of completing the Project, including the construction route. The City Building Official has the authority to require modifications and amendments to the Construction Management Plan as deemed necessary throughout the course of the Project and until the Final Inspection.
  - a. Construction Site Control of Stormwater. The California Regional Water Quality Control Board requires all projects that disturb the site to comply with Provision C.6 of the San Francisco Bay Regional Stormwater NPDES Permit in order to prevent construction site discharges of pollutants and other regulated materials during construction. As required by the Chief Building Official and prior to the issuance of a building permit, the Applicant shall develop and submit a construction stormwater management plan as part of the Construction Management Plan to achieve timely and effective compliance with Provision C.6. Permit Provision C.6.c.ii provides sources for site specific, and seasonally- and phase- appropriate, effective Best Management Practices (BMPs) that may be incorporated into the stormwater management plan. Copies of the Municipal Regional Stormwater Permit are available from the Piedmont Public Works Department and on-line at [cleanwaterprogram.org](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.

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

8. Defense of Legal Challenges. The Applicant 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 Applicant's project ("Challenge"). City may, but is not obligated to, defend such Challenge as City, in its sole discretion, determines appropriate, all at Applicant'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 Applicant, City, and/or parties initiating or bringing such Proceeding. If the Applicant 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 Applicant of any Proceeding and shall cooperate fully in the defense.

WHEREAS, Piedmont Shell Auto Care is requesting to install a storage container and associated electrical conduits, 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 storage container and associated electrical conduits is inconsistent with the City's General Plan and Piedmont Design Guidelines, as follows:

1. The proposed design is inconsistent with the original architecture and neighborhood development. The accessory storage structure is a utilitarian structure, which is unsightly, and is not compatible with the adjacent buildings. Its position eliminates parking. The distance between the accessory structure and neighboring home is not appropriate. There is not sufficient screening between the accessory structure and either the public way or adjacent homes.
2. The accessory structure has little or no effect on neighboring properties' existing views, privacy, and access to direct and indirect light.
3. The proposed design does adversely affect pedestrian or vehicular safety.

4. As a temporary structure, this is an inappropriate permit application, for a design review permit.

5. The application does not comply with Piedmont Design Guidelines Chapter 4 criteria.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission recommends denial without prejudice by the City Council of the design permit application for the accessory storage building and associated electrical conduits submitted by Piedmont Shell Auto Care for 29 Wildwood Avenue, Piedmont, California,

Moved by Ramsey, Seconded by Levine  
Ayes: Duransoy, Levine, Ramsey, Strout, Batra  
Noes: None  
Abstain: None

**Resolution 335-CUP-21**

WHEREAS, Piedmont Shell Auto Care is requesting a modification to the conditional use permit for operation of a , and the structural modifications related to the installation of an accessory storage structure; and,

WHEREAS, after reviewing the application, plans, and any and all testimony and documentation submitted in connection with such application, and after having visited the subject property, the Piedmont Planning Commission recommends that the project is categorically exempt under the California Environmental Quality Act, CEQA, pursuant to Section 15301, Class 1(a), existing facilities, and the proposal conforms with the criteria and standards of Section 17.68.040 of the Piedmont City Code as follows:

1. The proposed additional use as a retail store is compatible with General Plan particularly Land Use Element Policy 2.1 (Local Serving Emphasis) and conforms to the zoning code in that the use is related to other surrounding businesses and the use as a retail store complies with standards for Zone D listed in Section 17.26.

2. The use as a retail store is primarily intended to serve Piedmont residents rather than the larger region in that Piedmont residents are already customers of Piedmont Shell Gas Station and Auto Care and that the proposed location within the business makes it more visible and accessible to Piedmont residents.

3. Under all the circumstances and conditions of the particular case, the use will not have a material adverse effect on the health, safety, or welfare of persons residing or working in the vicinity. Considerations for this finding include no substantial increase in traffic, parking needs, or noise; and no adverse effect on surrounding property values in that pedestrian and vehicular safety will not be affected because the traffic, customer usage, and noise impacts will be similar to the prior use.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission recommends approval by the City Council of the conditional use permit application by Piedmont Shell Auto Care for 29 Wildwood Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

1. Terms of the Approval. A review of the conditional use permit shall occur in December 2023, and the conditional use permit shall have the following operational characteristics:

Office Hours: Monday – Sunday, 7 a.m. – 10 p.m.

Number of Staff/Personnel: 6

2. The approval of this application is subject to the issuance of a building permit for the construction of an area for a convenience store within the footprint of the existing building.
3. Signage. Any new or modified exterior signage may require a design review permit as provided in Division 17.36 of the City Code.
4. The accessory storage structure and associated electrical hook-ups are not approved as part of this permit.

Moved by Ramsey, Seconded by Levine  
Ayes: Duransoy, Levine, Ramsey, Strout, Batra  
Noes: None  
Abstain: None

**Fence Design Review  
Permit, 109 St. James  
Drive, #21-0336**

The Property Owners are requesting retroactive approval for the installation of a redwood fence located along the front property line and within the 20-foot street yard setback.

**Public testimony** was received from:

Murat Bozkurt, Property Owner, stated the fence was installed a few weeks ago and that height of the fence is 33 inches, which is even less than 3 feet, and is well below 4 feet. The fence provides safety to the pedestrians who are walking by to look at the waterfall, so they can easily see the waterfall, without the possibility of falling down the cliff.

The sole purpose of the fence is to create safety, prevent accidental falls at the sidewalk to the property with a deep slope, going down approximately a five-foot story building. Due to pandemic, pedestrians and bicyclist passing by increased tremendously and increased the risk and liability both for us and the City of Piedmont. There is no other fence around the property except this location, where safety is the main concern.

Commissioner Levine stated as a reminder that the design guidelines discourage front yard fences. He suggested that hedges could be planted instead of the fence. He agrees that a barrier is needed because of the drop-off. Commissioner Duransoy stated she approves the fence, there is a safety precaution, and it is made of natural material. Commissioner Strout understands the safety factor of the fence and the height is appropriate. He supports an open fence design. Commissioner Ramsey stated he supports the fence because the Commission does grant exceptions for unique properties, and this property has both a cliff and a waterfall, this application is different due to the unique physical characteristic of the site, and the homeowner stated there is a public safety issue.

**Resolution 336-FDR-21**

WHEREAS, The Property Owners are requesting retroactive approval for the installation of a redwood fence located at 109 St. James Drive, along the front property line, which construction requires a fence 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 3 (e), new construction or conversion of small structures, and the project is consistent with General Plan programs and policies, and 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 and the following building features are consistent with the architectural design and neighborhood development, including the fence height, location, and natural material.
2. The design has little or no effect on neighboring properties' existing views, privacy, and access to direct and indirect light.
3. The proposed design helps with the effect of pedestrian or vehicular safety.
4. The application complies with Piedmont Design Guidelines Chapter 3 Site Design 3.09 (Fences and Walls).
5. The application complies with the City's General Plan Design and Preservation Policies 29.3 (Front Yard Enclosures) and 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 the construction at 109 St. James Drive, 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. Encroachment Permit. Before the issuance of a building permit, the Property Owner shall apply for an encroachment permit to allow for the construction within the public right-of-way.
3. Final Landscape Plan. Before issuance of a building permit, the Property Owner shall submit for staff review and approval a landscape plan for the area proximate to the new fence. Where appropriate, vegetation shall be proposed in front of the new fence to reduce its visibility and provide visual interest. 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.

Moved by Duransoy, Seconded by Levine  
Ayes: Duransoy, Levine, Ramsey, Batra  
Noes: Strout  
Abstain: None

**ANNOUNCEMENTS**

Chair Batra wished everyone a Happy Holiday.

Director Jackson reminded the commission and public that the Community Pool Workshop is scheduled on December 14, 2021, and there will also be a pool advisory committee meeting. He also announced that the Planning Commission would be taking a recess from its regular meetings in January 2022, but that the Commission will have a special meeting scheduled on January 10, 2022, to receive an update on the Community Pool design and the SB-9 law.

**ADJOURNMENT**

There being no further business, Chair Batra adjourned the meeting at 8:10 p.m.