

**CITY OF PIEDMONT  
COUNCIL AGENDA REPORT**

MEETING DATE: May 2, 2005

FROM: Kate Black, City Planner

SUBJECT: Appeal of Design Review Decision at 1 Maxwellton Road  
(Application #05-0089)

**RECOMMENDATION:**

1. Uphold the Planning Commission's April 11, 2005 decision on a Design Review application for modifications to the design of a new single-family residence at 1 Maxwellton Road, subject to the Commission's conditions of approval 1 through 27 by reference (on pages 5 through 8 of this report);
2. Adopt the Planning Commission's findings for approval by reference (on page 4 of this report); and
3. Refer the alternative garage design submitted after the Planning Commission meeting on April 15, 2005, to the Planning Commission for review.

**GROUND FOR APPEAL:**

Attached is a copy of the appeal (Exhibit F, page 48), filed on April 14, 2005 and amended on April 25, 2005, by Stephen Parker, property owner and developer of 1 and 3 Maxwellton Road. The appeal requests an overturn of the Commission's decision to deny a portion of the application related to the addition of two more bedrooms, a third garage space, widened driveway and taller retaining wall. The amended appeal indicates the applicant also wishes to appeal conditions of approval, but does not specify which conditions.

**BACKGROUND:**

The 1 Maxwellton Road property is a vacant piece of land that slopes steeply upward from Moraga Avenue. Access to the site is from Maxwellton Road via a driveway that crosses over the 3 Maxwellton Road property (also vacant) and is shared with the property at 7 Maxwellton Road, which was developed in the 1960s with a single family residence (owned by the Weber family). The existing driveway is quite steep and is non-conforming because it exceeds the City's maximum 20% slope permitted.

The two properties at 1 and 3 Maxwellton have been the subject of numerous applications for development since the early 1990s, and it should be noted that as part of all of the prior approvals, the non-conforming driveway was proposed to be modified so that it met the City's 20% maximum slope requirement. A more detailed history of the applications and Planning Commission and City Council decisions is provided in Exhibit A, page 14, but the recent history of applications is provided below.

In September of 2004, the Planning Commission conditionally approved two applications permitting the construction of a single family residence on each property. The applicant was the current property owner, Stephen Parker, who was in the process of purchasing the properties. The applications were appealed by the Weber family, but the Commission's approvals were upheld by the City Council in November of 2004. The meeting minutes from the Council meeting are attached as Exhibit C , page 28. During the review of these applications, it was noted that the plans probably had inconsistencies that would require subsequent design review modifications prior to the issuance of building permits.

The applicant did determine that the plans needed to be modified to address inconsistencies, and the applicant also wished to make other modifications to the residences and properties, and at the April 11, 2005 meeting, the Planning Commission reviewed applications for both properties to make those modifications to the December, 2004 approvals.

The Commission conditionally approved the application for 3 Maxwellton Road (not subject to this appeal), which proposed stylistic exterior modifications to the house, new open guest parking, and an interior reconfiguration of the floor plan to add a room eligible for use as a bedroom. The Commission noted that because the bedroom count only increased from three to four, the project was still in compliance with the Code, without requiring alterations to the previously approved two-car garage. They found the increase to be modest and reasonable, and supported the open parking noting that there was not other guest parking options in the immediate area. The 3 Maxwellton Road approval was recently appealed by Doug Vance, 970 Moraga Avenue, and will be heard separately on the June 6, 2005 Council meeting. This report will only address the application for modifications to 1 Maxwellton Road, which was appealed by the applicant, Stephen Parker.

#### CURRENT APPLICATION SUMMARY – 1 MAXWELTON ROAD:

The current application to make modifications to the design of the previously approved new residence at 1 Maxwellton Road includes stylistic exterior alterations and the addition of several open guest parking spaces between the 1 and 3 Maxwellton Road properties. Although the basic building envelope of the house is not proposed to change, the

applicant is proposing interior modifications that result in the addition of two new bedrooms, for a total of 6 bedrooms. In order to comply with the parking regulations of the Code, the applicant is proposing a new, third garage space adjacent to the previously approved two-car garage. The new garage space is proposed closer to Moraga Avenue, and results in the necessity of widening the driveway for access. The widened portion of the driveway is actually a “bridge” above the steep grade which is supported by a retaining wall with a wrought iron “crash barrier” railing. Compared to the previously approved application, the new garage height increased more than 3 feet at the elevation fronting Moraga Avenue and the height of the retaining wall supporting the widened driveway increased from a maximum of 14 feet to 19 feet, 6 inches.

Revised landscape plans were submitted, and a colored version of the view of 1 Maxwelton Road is available for review in the Planning Department.

#### PLANNING COMMISSION ACTION:

During the Planning Commission meeting, the Commission asked the applicant detailed questions about the “grow-in” timing and height of proposed landscape materials and if the applicant had considered other garage alternatives. In response to written comments regarding traffic impacts from area neighbors including the property owner at 970 Moraga Avenue, staff directed the Commission’s attention to a letter from Moses Wilson of Wiltec, the City Traffic Engineer, written in 1998, regarding an earlier proposal for two residences at 1 and 3 Maxwelton Road (Exhibit E, page 47). Mr. Wilson found that the amount of additional traffic generated by the two single-family residences on Maxwelton Road and Moraga Avenue will be negligible, although he did recommend that the landscaping along the driveway be kept at a low height (condition #12 addresses his landscaping concern).

In general, the Planning Commission found the proposed stylistic changes to the residence to be in compliance with the City Code and Design Guidelines and the proposed open guest parking to be appropriate, and conditionally approved those portions of the application. However, the majority of the Commission found that the proposed garage, widened driveway and taller retaining wall, necessitated by the request for the two additional bedrooms, did not meet the Design Guidelines and denied that portion of the application. With the exception of Commission Chair Marty Greenman, the majority of the Commission found that the increased heights of the garage and retaining wall, being approximately 10 feet closer to Moraga Avenue than the prior approved project, presented too much bulk and mass to Moraga Avenue and across the canyon. Additionally, the majority of the Commission found that this increased mass closer to the street was exacerbated by the reduction in the depth of the landscape area on the slope between the walls and the street, further reducing the ability to screen the project with landscaping.

NEW ISSUES SINCE THE PLANNING COMMISSION MEETING:

After the Planning Commission meeting, the applicant filed an appeal of the Commission's denial of the design of the two new bedrooms, the third garage space, the widened driveway and taller retaining wall. Subsequent to the filing of the appeal, the applicant submitted an alternative garage plan he wishes the Council to review. The plan proposes to locate the third parking space under the living room and terrace of the house. Although there do not appear to be any violations of the building or planning code related to this alternative design, it has not been comprehensively reviewed by the Planning Commission or staff. The plans in the Council packets have been marked by staff as "Plans Reviewed by Planning Commission" and "Alternative Garage Design".

PLANNING COMMISSION FINDINGS:

In denying the portion of the application related to the addition of two new rooms eligible for use as bedrooms, the third garage space, widened driveway, and increased height retaining wall, the Commission determined that the proposal did not conform with the criteria and standards of Section 17.20.9 of the Piedmont City Code and the Residential Design Guidelines, and made the following findings for denial:

1. The design of the improvement is not desirable, namely the increased height of the retaining wall necessitated by the design and placement of third parking space on the lot, is not as aesthetically pleasing as the previously approved design because of the additional height and bulk imposed on the streetscape and across the canyon; which height and bulk cannot be rapidly mitigated by the proposed landscaping.
2. The design of the improvement does have a substantial adverse effect on neighboring properties because of the creation of an extremely bulky, monolithic structure, both taller and closer to the street which is not consistent with the City's Design Review Guidelines.

In approving the rest of the application, the Planning Commission determined that the proposal does conform with the criteria and standards of Section 17.20.9 of the Piedmont City Code and the Residential Design Guidelines and made the following findings for approval:

1. The design of the improvement is desirable because it is consistent with the proposed structure, in particular the roof, windows and materials are aesthetically pleasing as a whole and harmonious with proposed development.

2. The design of the improvement does not have a substantial adverse effect on neighboring properties because there is no change from the previously approved plan in terms of the project's impact on neighboring views, light or privacy.
3. The design does not adversely affect pedestrian safety, vehicular traffic, or the convenience of either pedestrians or vehicles. The parking situation will be improved by the "open parking" situation available to both #1 and #3 Maxwellton.

CONDITIONS OF APPROVAL:

The conditions of approval required by the Planning Commission are substantially similar to the conditions approved by the Planning Commission and City Council for the prior approvals. The Commission added condition #27, which was recommended by staff in a memorandum separate from the staff report to address concerns about the shared parking, driveway access and maintenance (Exhibit D, page 41).

1. The approved plans are those submitted on March 30, 2005, after neighbors were notified of the project and the plans were available for public review (**This condition shall read "The approved plans include the amendment submitted on April 15, 2005, after neighbors were notified of the project and the plans were available for public review" if the Council elects to approve the alternative garage plan instead of referring the project to the Planning Commission**);
2. Based on the scope and nature of the proposed landscape and development plans, a best management practice plan for construction which complies with the new Alameda Countywide Clean Water Program General and Residential Conditions of Approval (containing a storm water pollution prevention plan which will be required for earthwork operations) will need to be developed by the applicant prior to obtaining a building permit;
3. Based on the scope and nature of the proposed project, the applicant shall submit a construction time-line to ensure that the construction is completed in a reasonable amount of time. The construction time-line must be approved by staff prior to the issuance of building permits, and shall specify a date that the application shall be scheduled for a rehearing with the Planning Commission if the schedule is not met. The Planning Commission may attach conditions necessary to ensure timely completion of the construction, including the requirement of a financial instrument such as a performance bond or deposit;

4. Prior to the issuance of a building permit, the plans shall eliminate all existing inconsistencies. During building permit review, staff will review the plans and determine whether or not the final coordinated design requires further design review or variances;
5. Prior to the issuance of a building permit, the applicant shall apply for and receive approval of an encroachment permit for the construction of any features within the City right-of-way;
6. Prior to the issuance of a building permit, the applicant shall submit a construction management plan which shall be subject to staff review and approval. The City reserves the right to make changes to the plan if necessary. Vehicular and pedestrian access for 7 Maxwellton Road must be maintained throughout construction;
7. Because it is a new occupancy, the house must be fully sprinkled pursuant to NFPA 13R standards and the Piedmont Building Code;
8. A Fire Department Connection (FDC) is required on the outside of the structure. Prior to the issuance of a building permit, the final design and location shall be subject to Fire Department approval;
9. Due to the slope and angle of the proposed driveway, the Fire Department will require a standpipe system to make accessing a water supply to the area less difficult. The standpipe system is a large diameter pipe that will ascend from the road to an area near the structures;
10. Prior to the issuance of a building permit, the final design of the roadway configuration and section must be approved by the Fire Department, and be able to accommodate the gross vehicle weight of Department apparatus;
11. The existing trees shall be preserved within the 20 ft. front setback area;
12. A final landscaping plan shall be submitted for staff review and approval prior to the issuance of a building permit and the project's landscape architect shall be required to certify that landscape plant material and irrigation systems were installed in accordance with said plan. Prior to the issuance of a certificate of occupancy. The landscape plan shall propose appropriate landscape screening to the large retaining walls to the south of the driveway retaining walls. Low growing groundcover not exceeding 12 inches in height shall be installed along the driveway and frontage area of the intersection of the driveway with Maxwellton Road and shall be maintained at this height for perpetuity. This condition shall also be designated in the final landscaping plan;

13. A traffic-viewing mirror be installed near the driveway mouth to enable drivers to see on-coming traffic;
14. The “sight-line” retaining wall, including all improvements specified by the Planning Commission on June 14, 2004 (application #03-0287), must be constructed prior to the construction of this residence;
15. Discrepancies were noted regarding the status of the sewer easements. The City needs to verify the accuracy of the existing and proposed easement locations prior to the issuance of a building permit or entitlement. The applicant may want to contact his title company and get an updated report to aid his engineer/surveyor in clearing up the discrepancies noted in a separate Summary of Comments;
16. Confirm the status and location of the existing sewer and easements. Provide record easements and quitclaims for City sewer line. Verify the status of the realigned sewer in 91-301100 and the status of the original sewer easement 8092 OR 169;
17. Applicant to confirm that proposed realignment of City sewer is placed in correct easement;
18. All new sewer easements and quitclaims shall be filed concurrently;
19. All legals and plats to be submitted for review and approval by City Engineer prior to recording. Legal and plats to be signed and stamped by engineer/surveyor;
20. Copies of all new recorded easements and quitclaims to be provided prior to the issue of any building permit;
21. A utility and access easement for a portion of 7 Maxwellton was granted to 1 & 3 Maxwellton, however there is a note regarding a quitclaim that is confusing as to what it is in regards to. Applicant should clarify the status of this issue;
22. Plans submitted for building permit approval must address the following issues;
  - a. A separate grading plan should be included showing location and height of all retaining walls, slope ratio of banks and conforms along perimeter of boundary. The design must be consistent with recommendations in the soils report.

- b. Plans shall include elevations at grade breaks and slope of driveway. Maximum driveway slope is 20%. The grade break at the driveway entry off Maxwellton must address vehicles bottoming out on approach.
  - c. Both civil and retaining wall plans must show the location and clearance of storm water and other utilities with footing of walls.
23. A performance bond for the completion of the driveway, bridge, retaining wall and the irrigation and landscaping in front of this retaining wall shall be required. The amount of the performance bond shall be determined by the Director of Public Works. The retaining wall shall be earth-tone in color to minimize its visual impact, subject to staff review;
24. The existing “Weber” retaining wall and its footings shall not be disturbed;
25. Should the project be abandoned after its start because of cost over-runs, a guard rail from the edge of the driveway back to grade shall be installed so there is a closure at the dead-end of the driveway. In addition, continued access through 3 Maxwellton to 7 Maxwellton shall be provided. Costs to cover implementation of these two conditions shall be included in the aforementioned performance bond.
26. The City Planner is directed to defer for Planning Commission review and action any changes made to the approved plans deemed to be significant.
27. Prior to the issuance of a building permit, the applicant shall submit an agreement, subject to the approval of the City Attorney, that addresses the common guest parking spaces near the mutual property line, access for the common driveway, and long term maintenance of the common driveway.

CODE COMPLIANCE:

The lot is a conforming lot in zone A. The lot contains approximately 17,164 square feet of area and 112 feet of frontage. The minimum lot area required in the City Code (section 17.10.2) is 10,000 square feet and the minimum lot frontage (section 17.10.3) is 90 feet. *Complies.*

The structure coverage from the prior approval is 27.88% and is proposed to under the current application to increase to 31.23%. The maximum limit in the City Code (section 17.10.4) is 40%. *Complies.*

The impervious surfaces coverage from the prior approval is 41.55% and is proposed under the current application to increase to 51.4%. The maximum limit in the City Code (17.10.4) is 70%. *Complies.*



The building height (average) from the prior approval is 30 feet, 6 inches and is proposed under the current application to increase to 31 feet 4 inches. *It should be noted that as verified by California Licensed Land Surveyor, Luther L. Clem, the ridge height for the house has not changed from the prior plans, but the “building height” as counted under the Piedmont’s methodology has increased because the low point of grade has changed due to the proposed addition of the third garage space.* The maximum limit in the City Code (section 17.10.5) is 35 feet. *Complies.*

The front yard setback from the prior approval is 40 feet, 6-1/2 inches to the eaves of the garage, and is proposed under the current application to decrease to 31 feet, 4 inches to the eaves of the new garage space. The minimum required front yard setback in the City Code (section 17.10.6) is 20 feet. *Complies.*

The right side yard setback from the prior approval is 4 feet and is proposed under the current application to increase to 4 feet, 2 inches to the eaves of the house. The minimum required side yard setback in the City Code (section 17.10.7) is 4 feet. *Complies.*

The left side yard setback from the prior approval is 21 feet, 9 inches and is proposed under the current application to be approximately 22 feet to the proposed new balcony. The minimum required side yard setback in the City Code (section 17.10.7) is 4 feet. *Complies.*

The rear yard setback from the prior approval is 27 feet, 4 inches and is proposed under the current application to increase to 28 feet, 8 inches to the eaves. The minimum required rear yard setback in the City Code (section 17.10.8) is 4 feet. *Complies.*

Under the prior approval, 4 rooms eligible for use as a bedroom and 2 covered non-tandem parking spaces each measuring at least 9 feet by 20 feet are proposed. Under the current application, 6 rooms eligible for use as a bedroom and 3 covered non-tandem parking spaces each measuring at least 9 feet by 20 feet are proposed. *Complies.*

Under the prior approval, the floor area ratio is 31.71% and is proposed to be 29.21% under the current proposal. The limit in the City Code is 45% for a parcel which exceeds 10,000 square feet (section 17.22(a)). *Complies.*

#### DESIGN REVIEW GUIDELINES:

Design Review Guidelines for new construction that may be used for reference are provided below.

Guideline I-1: Where one architectural style is predominant in the neighborhood, the new residential construction should be compatible with this predominate architectural style.

Where no one architectural style is predominant in the neighborhood, the new residential construction should be compatible with the architectural style of the houses near it. The proponent of the new construction shall be responsible for including graphic materials in his/her submission to the City documenting compatibility.

- I-1(a): In many of the residential neighborhoods in Piedmont, all or most of the houses reflect one of the vernacular architectural styles which were popular during the pre-World War II period. In other neighborhoods, there is often a mixture of styles. Where a neighborhood is characterized by a predominant architectural style, this guideline requires that the design of a new residence be compatible with the architectural elements which define this predominant style. The phrase “be compatible with” by no means requires that a new residence be a precise copy of the predominant style, but neither does it prohibit this. For example, if the predominant style is two-story Mediterranean Revival, the design of the new residence should emulate the scale and massing of this style and may, but need not, incorporate the distinguishing elements of this style - tile roof, white stucco walls, large picture window in front.
- I-1(b): Where several different styles of vernacular architecture are found in a neighborhood, the emphasis shifts from the neighborhood to the architectural styles of the houses in proximity to the new residence, especially those on either side of it as they face the street. In this situation, this guideline requires that the design of the new residence be compatible with the architectural elements which define the styles of these nearby houses. This does not mean that the new residence must select the style of one of these neighboring houses and follow it. Instead, the new residence may select an architectural styles that creates a design which relates to its neighbors.
- I-1(c): In both conditions, a single predominant style or several styles, the goals of this guideline are harmony and integration. These goals are not, however, intended to preclude creativity, innovation, or the use of modern design styles and elements. If modern styles and elements are used, the new residence should not attempt to call attention to itself or attempt to make a statement any more than other residences in the neighborhood. The new residence should strive to fit into the architectural character of the neighborhood by reflecting the scale and mass\* of the existing houses within the neighborhood. The design of the new residence should suggest, and ideally incorporate, either the design elements of the predominant architectural style of the street or of the adjacent houses, as appropriate, and reinterpret them in a modern context.

I-1(d): In either condition, a single predominant style or several styles, the new residence should select one architectural style, or if the new residence incorporates the design elements of two or more different styles to result in a integrated design solution, the different styles should work together with integrity.

Guideline I-2: The siting of the new residence on its lot should be compatible with the siting of the residences along the street on which the new residence fronts. Priority attention should be given to the siting of the new residence with respect to the residences on either side.

I-2(a): Nothing in this guideline should be interpreted to relieve a new residence of its obligation to conform to the requirements set forth in Chapter 17 of the City of Piedmont Code. In the event of a conflict, the latter shall prevail.

I-2(b): In the context of Guideline I-2, the phrase “be compatible with” means that the new residence should respect the existing front, side and rear yard setbacks of the houses in the neighborhood so that the overall character of the neighborhood is maintained in this respect.

I-2(c): If there is a uniform front-yard setback, the new residence should respect this setback. There must be compelling reasons why the new residence does not conform to the uniform setback. If there exists a range of front-yard setbacks, the setback of the new residence should fall within this range. In either case, uniform or range of front-yard setbacks, the setback of the new residence should ordinarily not be less than the residences on either side, unless a lesser setback will not significantly obstruct or reduce the view of the streetscape available from these existing residences.

For the purpose of Guideline I-2, “uniform” means an approximately equal distance from a common point of measurement, such as the centerline of the street, the curb of the street or the edge of the sidewalk closest to the existing and new residences, or the front property line.

I-2(d): The siting of a new residence with respect to its rear-yard setback should ordinarily not significantly impair access to sunlight or the feeling of openness available to existing residences on either side of the proposed new residence.

Guideline I-3: See Guideline I-1, Comments I-1(b), (c) and (d), and Guideline I-2, Comments I-2(a), (b) and (c).

Guideline I-4: See Guideline I-1, Comments I-1(b), (c) and Guideline I-2, Comments I-2(a), (b) and (c).

Guideline I-5: A new residence constructed on a steep slope should take advantage of the topography and be designed to reduce the effective visual bulk of the structure and avoid an appearance of excessively large bulk.

I-5(a): Structures built on steep slopes, such as are typically found in many areas of Piedmont, stand out prominently when seen from a distance or from below, and cannot be screened effectively by plants until they reach maturity, a process which may take many years.

I-5(b): The intent of Guideline I-5 is to encourage designs for new hillside residences which work with rather than against the topography. New hillside residences should follow the contour of the slope with the form of the building and should avoid large building planes, breaking them up into several horizontal and vertical elements.

Guideline I-6: The new residence should be physically integrated into the neighborhood so that it appears to residents and visitors to the neighborhood that the new residence belongs to and is a part of the neighborhood.

Guideline I-7: The siting and construction of a new residence, including its plantings at mature growth, should make all reasonable efforts to preserve significant views currently available to existing residences. The siting and construction of a new residence, including its plantings at mature growth, should consider views potentially available to residences which may be constructed in the future, and reasonably attempt to preserve these views.

I-7(a): This guideline should not be interpreted to suggest the planting of mature landscaping.

Guideline I-8: The new residence should have an outdoor yard or open space which, if topography permits, is screened from the view of contiguous parcels.

Guideline I-9: The siting of the new residents, the exterior location of its windows, and the exterior location of appliance ventilation and exhaust ports should respect the visual and acoustical privacy of the residences located on contiguous parcels, including their outdoor yards or open spaces,

I-9(a): This guideline shall not be interpreted as an outright prohibition of side yard windows. Rather, the design of the windows of the new residence should consider their number, size, placement, glazing treatment and dressing in order to respect the visual and acoustical privacy of the

residences located on contiguous parcels. Similarly, the ports or exterior wall openings for clothes dryer vents, kitchen and stove exhaust fans and other appliances should be sensitive to their acoustical impacts on adjacent residences.

Guideline I-10: The siting of the new residence and its landscaping should clearly differentiate between the public street space and the private space of the new residence, and give the appearance that its residents control their private space.

Guideline I-11: The siting of the new residence and the interior design of its room should discourage visual access by persons driving by in automobiles or walking along the sidewalk, yet allow for the view of the streetscape and the neighborhood by the occupants of the new residence.

Guideline I-12: The entryway to the new residence should be observable from the street.

#### CLEANWATER CONSIDERATIONS

The proposed project will create *or replace* more than 5,000 square feet of impervious surfaces and will result in significant changes to water runoff at the site. Implementation of stormwater treatment Best Management Practices (BMPs) as well as the Bay Area Stormwater Management Agencies Association's *Start at the Source* criteria for stormwater quality protection is necessary.

#### CEQA COMPLIANCE

The proposed project is Categorical Exempt from the provisions of the California Environmental Quality Act pursuant to Article 19, Sections 15300 through 15329.

#### CITY COUNCIL ACTION REQUIRED:

City Council action is required to uphold or overturn the decision of the Planning Commission.

Date Report Prepared: April 27, 2005

#### EXHIBITS:

Exhibit A, page 14	History of Approvals at 1 and # Maxwellton Road
Exhibit B, page 16	April 11, 2005 Planning Commission Meeting Minutes
Exhibit C, page 28	November 15, 2004 City Council Meeting Minutes

Exhibit D, page 41	April 8, 2005 Memorandum from staff regarding parking and driveway access/maintenance
Exhibit E, page 47	August 26, 2005 Letter from Moses Wilson, Wiltec, related to traffic
Exhibit F, page 48	April 14, 2005 Appeal Letter from applicant with April 25, 2005 Amendment Letter
Exhibit G, page 50	Neighborhood comments
Exhibit H, page 77	Application materials
Exhibit I, separate	Plans Reviewed by Planning Commission
Exhibit J, separate	Alternative Garage Plans

**HISTORY OF APPROVALS AT 1 AND 3 MAXWELTON ROAD**

Since July of 1997, the City has reviewed several new house applications for this property and the adjacent property at 3 Maxwellton Road. The property originally consisted of 4 lots, known as 1, 3, 5 and 7 Maxwellton Road, owned by the current property owners of 7 Maxwellton Road, Mr. and Mrs. Edward Weber. The house at 7 Maxwellton Road was built in 1961, and a retaining wall along the driveway was constructed in 1968 - this is the retaining wall that still exists on the left side of the driveway. In 1990, a lot line adjustment was granted to the Webers to merge three lots (1, 3, and 5) into two lots, now known as 1 and 3 Maxwellton Road. In 1991, The Webers were granted approval to construct two houses at 1 and 3 Maxwellton Road, but they did not obtain building permits or construct the residences. The Webers sold the 1 and 3 Maxwellton properties, and the new owners proposed applications between 1997 and 1998 which were denied.

In 1997, area residents including the Webers requested that a projecting “bulge” of land at the intersection of the driveway and Maxwellton Road be cut back to improve visibility of vehicles on the driveway and the Road. In 1998, the City approved an application for the development of two residences at 1 and 3 Maxwellton Road. As a condition of approval, the bulge was required to be cut back, and a retaining wall, known as the “sight-line” wall was required to be installed to address the visibility concerns raised by area neighbors. The installation of the sight-line wall was required to be completed before a building permit could be issued to construct either new residence. The approval of the two residences was appealed by the owners of 81 Maxwellton Road (Mr. and Mrs. Robert Miller), but upheld by the City Council. The properties and approvals were subsequently sold to Ted Dang.

Mr. Dang determined that the approved plans did not accurately reflect site conditions, and in 1999, the Planning Commission re-approved the houses with modifications. Further re-approvals of the houses with modifications occurred in 2000, including the City Council’s action to uphold the Planning Commission on an appeal filed by Doug Vance, the owner of 970 Moraga Avenue. As with the prior approvals, the installation of the sight-line wall was required to be completed before a building permit could be issued to construct either new residence.

In September of 2000, Mr. Dang pulled a building permit to construct the wall. However, during construction of the wall, the contractor over-excavated the hill slope behind the wall, near the Weber’s property. Several different engineering solutions to solve the over-excavation condition were sporadically submitted by Mr. Dang over the next three years, but they did not meet engineering standards and were strongly contested by the Webers.

Because the construction of the wall was not completed, building permits for the houses were never issued and thus, the design review approvals expired.

Finally, in June of 2004, the Planning Commission approved a design to modify the sight-line retaining wall, along with the previous condition of approval stipulating that the modifications had to be constructed and completed prior to the issuance of any building permit for the construction of the two houses. A building permit application for the construction of the approved modifications to the sight-line wall has been submitted, but as of the date of this report, has not yet been issued a building permit.

The 1 and 3 Maxwellton Road properties were recently sold again to Stephen Parker, who wishes to develop the properties, and live at 3 Maxwellton Road. On November 15, 2004, the City Council upheld a Planning Commission approval (under appeal by the Webers), for the development of the two properties. The approved house and site designs were substantially the same as the designs approved in 1999. As indicated in the Council meeting minutes (Exhibit C, page 28), concerns about the accuracy of the plans were discussed.



## PIEDMONT PLANNING COMMISSION

### Regular Meeting Minutes for Monday, April 11, 2005

A Regular Session of the Piedmont Planning Commission was held April 11, 2005, in the City Hall Council Chambers at 120 Vista Avenue. In accordance with Government Code Section 54954.2(a) the agenda for this meeting was posted for public inspection on March 28, 2005.

#### CALL TO ORDER

Chairman Hege called the meeting to order at 5:00 p.m. She introduced newly appointed Alternate Commissioner Clark Thiel and announced that Jonathan Levine has been appointed as a regular Commission member.

#### ROLL CALL

Present: Commissioners Arleta Chang, Marty Greenman, Tamra Hege, Suzanne Summer and Alternate Commissioner Clark Thiel

Absent: Commissioner Jonathan Levine (excused)

Staff: City Planner Kate Black, Assistant Planner Linda Ajello, Planning Consultant Robin Stark, Planning Technician Kevin Jackson and Recording Secretary Chris Harbert

#### Design Review #1 & #3 Maxwellton

Mr. Stephen Parker is requesting design review to modify a previously approved house design for:

**#3 Maxwellton:** with interior and exterior changes including but not limited to: adding a room eligible for use as a bedroom; changes to the building and wall setbacks; changes to the eastern and northwestern patios; new and modified retaining walls (including increased height); changes to the driveway to permit new open guest parking; and stylistic exterior modifications including changes to the windows, doors and balconies. The revised plans also show grade changes that are different from the grade shown in the previously approved plans.

**#1 Maxwellton:** adding two rooms eligible for use as bedrooms; stylistic exterior alterations; a new third garage space; grade changes; modifications to the driveway to permit additional parking; modifications to the retaining walls, including increased height; modifications to the patios including a new patio trellis; window and door modifications; and changes to the exterior lights.

Written notice was provided to neighbors. **One affirmative, three negative response forms** were received for each application. **Correspondence** was received from: Edward & Evaline Weber, March 29; Dan Cox & Jennifer Lilburn, April 5; Mila Magallanes, April 4;

**Public testimony** was received from:

Stephen Parker stated that he retained a new architect, surveyor and engineer to review the previously approved plans and make revisions to make the new homes more functional for his personal needs. He noted that the homes' footprints have not been changed.

Dan Mancini, Project Architect, responded to questions concerning the proposed new guest parking, noting that the height of the retaining wall was increased as a result but that this wall will be screened with landscaping.

David Thorne, Landscape Architect, described the type of tree, shrub and vine landscaping which will be planted to screen and soften the appearance of the retaining wall. The wall at its highest point will be 19'6".

Ron Loar, Project Engineer, responded to questions concerning the retaining wall and driveway.

Doug Vance objected to the addition of more bedrooms, citing traffic concerns arising from a greater potential occupancy level. He also voiced concern that reflective glare from windshields of cars parked in the guest parking area could impact neighbors. Mr. Vance reiterated his previous requests that the driveway be constructed prior to home construction.

Betsy & Robert Miller opposed the changes, stressing that the previously approved designs reflected compromises which had taken years to reach. They felt by approving the proposed changes, the Commission would be disregarding and disrespecting previous planning commission decisions. In particular, they noted that previous planning commissions had intentionally kept the bedroom count low. They also objected to the lack of rear property landscaping and the size of the proposed homes.

The Commission supported the proposed design changes to #3 Maxwelton, believing that they were an improvement over the previously approved plan, agreeing that a 4 bedroom/2-car garage house was appropriate for the size of the lot, stating that the addition of guest parking was desirable given that no such parking exists on Maxwelton and noting that the design changes make for a more efficient use of the mass of the building.

**Resolution 525-DR-04**

WHEREAS, Mr. Stephen Parker is requesting permission to modify a previously approved house design with interior and exterior changes including but not limited to: adding a room eligible for use as a bedroom; changes to the building and wall setbacks; changes to the eastern and northwestern patios; new and modified retaining walls (including increased height); changes to the driveway to permit new open guest parking; and stylistic exterior modifications including changes to the windows, doors and balconies. The revised plans also show grade changes that are different from the grade shown in the previously approved plans located at 3 Maxwelton Road, Piedmont, California, which construction requires design review; and

WHEREAS, after reviewing the application, plans and any and all testimony and documentation submitted in connection with such application, and after having visited subject property, the Piedmont Planning Commission finds that the proposal conforms with the criteria and standards of Section 17.20.9 of the Piedmont City Code:

1. The design of the improvement is desirable because the exterior design elements, including building height, window treatment, roof

pitch and material, the attractiveness of the ornamentation, scale and massing of the structure stepped up the hill, are all equally or more attractive than the previously approved plan.

2. The design of the improvement does not have a substantial adverse effect on neighboring properties because there is no increase in neighbor view, privacy or light impacts than what existed by the prior approval.

3. The design does not adversely affect pedestrian safety, vehicular traffic, or the convenience of either pedestrians or vehicles and in fact may enhance traffic safety through the addition of guest parking.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review application of Mr. Parker for construction at 3 Maxwellton Road, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

1. The approved plans are those submitted on March 30, 2005, after neighbors were notified of the project and the plans were available for public review;
2. Based on the scope and nature of the proposed landscape and development plans, a best management practice plan for construction which complies with the new Alameda Countywide Clean Water Program General and Residential Conditions of Approval (containing a storm water pollution prevention plan which will be required for earthwork operations) will need to be developed by the applicant prior to obtaining a building permit;
3. Based on the scope and nature of the proposed project, the applicant shall submit a construction time-line to ensure that the construction is completed in a reasonable amount of time. The construction time-line must be approved by staff prior to the issuance of building permits, and shall specify a date that the application shall be scheduled for a rehearing with the Planning commission if the schedule is not met. The Planning Commission may attach conditions necessary to ensure timely completion of the construction, including the requirement of a financial instrument such as a performance bond or deposit;
4. Prior to the issuance of a building permit, the plans shall eliminate all existing inconsistencies. During building permit review, staff will review the plans and determine whether or not the final coordinated design requires further design review or variances;
5. Prior to the issuance of a building permit, the applicant shall apply for and receive approval of an encroachment permit for the construction of any features within the City right-of-way;
6. Prior to the issuance of a building permit, the applicant shall submit a construction management plan which shall be subject to staff review and approval. The City reserves the right to make changes to the plan if necessary. Vehicular and

pedestrian access for 7 Maxwellton Road must be maintained throughout construction;

7. Because it is a new occupancy, the house must be fully sprinkled pursuant to NFPA 13R standards and the Piedmont Building Code;
8. A Fire Department Connection (FDC) is required on the outside of the structure. Prior to the issuance of a building permit, the final design and location shall be subject to Fire Department approval;
9. Due to the slope and angle of the proposed driveway, the Fire Department will require a standpipe system to make accessing a water supply to the area less difficult. The standpipe system is a large diameter pipe that will ascend from the road to an area near the structures;
10. Prior to the issuance of a building permit, the final design of the roadway configuration and section must be approved by the Fire Department, and be able to accommodate the gross vehicle weight of Department apparatus;
11. The existing trees, to the extent possible, be preserved within the 20 ft. front setback area;
12. A final landscaping plan shall be submitted for staff review and approval prior to the issuance of a building permit and the project's landscape architect shall be required to certify that landscape plant material and irrigation systems were installed in accordance with said plan. Prior to the issuance of a certificate of occupancy. The landscape plan shall propose appropriate landscape screening to the large retaining walls to the south of the driveway retaining walls. Low growing groundcover not exceeding 12 inches in height shall be installed along the driveway and frontage area of the intersection of the driveway with Maxwellton Road and shall be maintained at this height for perpetuity. This condition shall also be designated in the final landscaping plan;
13. A traffic-viewing mirror be installed near the driveway mouth to enable drivers to see on-coming traffic;
14. The "sight-line" retaining wall, including all improvements specified by the Planning Commission on June 14, 2004 (application #03-0287), must be constructed prior to the construction of this residence;
15. Discrepancies were noted regarding the status of the sewer easements. The City needs to verify the accuracy of the existing and proposed easement locations prior to the issuance of a building permit or entitlement. The applicant may want to contact his title company and get an updated report to aid his engineer/surveyor in clearing up the discrepancies noted in a separate Summary of Comments;
16. Confirm the status and location of the existing sewer and easements. Provide record easements and quitclaims for City

sewer line. Verify the status of the realigned sewer in 91-301100 and the status of the original sewer easement 8092 OR 169;

17. Applicant to confirm that proposed realignment of City sewer is placed in correct easement;
18. All new sewer easements and quitclaims shall be filed concurrently;
19. All legals and plats to be submitted for review and approval by City Engineer prior to recording. Legal and plats to be signed and stamped by engineer/surveyor;
20. Copies of all new recorded easements and quitclaims to be provided prior to the issue of any building permit;
21. A utility and access easement for a portion of 7 Maxwellton was granted to 1 & 3 Maxwellton, however there is a note regarding a quitclaim that is confusing as to what it is in regards to. Applicant should clarify the status of this issue;
22. Plans submitted for building permit approval must address the following issues:
  - a. A separate grading plan should be included showing location and height of all retaining walls, slope ratio of banks and conforms along perimeter of boundary. The design must be consistent with recommendations in the soils report.
  - b. Plans shall include elevations at grade breaks and slope of driveway. Maximum driveway slope is 20%. The grade break at the driveway entry off Maxwellton must address vehicles bottoming out on approach.
  - c. Both civil and retaining wall plans must show the location and clearance of storm water and other utilities with footing of walls.
  - d. New driveway must be constructed in such a manner as to protect the structural stability of the existing retaining wall.
23. Prior to the issuance of a building permit, a licensed arborist must be retained to prepare a report regarding the long-term conservation of the oak tree on the property line abutting 81 Maxwellton. The report shall identify tree preservation measures during and after construction to preserve the health of the tree. These measures must be implemented as part of the building permit plans;
24. A performance bond for the completion of the driveway, bridge, retaining wall and the irrigation and landscaping in front of this retaining wall shall be required. The amount of the performance bond shall be determined by the Director of

Public Works. The retaining wall shall be earth-tone in color to minimize its visual impact, subject to staff review;

25. The existing “Weber” retaining wall and its footings shall not be disturbed;
26. Should the project be abandoned after its start because of cost over-runs, a guard rail from the edge of the driveway back to grade shall be installed so there is a closure at the dead-end of the driveway. In addition, continued access through 3 Maxwelton to 7 Maxwelton shall be provided. Costs to cover implementation of these two conditions shall be included in the aforementioned performance bond;
27. A construction fence shall be erected along the rear property line;
28. Prior to the issuance of a building permit, the plans shall be revised to show the construction of a slip sleeve in the rear retaining wall of 3 Maxwelton Road;
29. The City Planner is directed to defer for Planning Commission review and action any changes made to the approved plans deemed to be significant.
23. Prior to the issuance of a building permit, the applicant shall submit an agreement, subject to the approval of the City Attorney, that addresses the common guest parking spaces near the mutual property line, access for the common driveway, and long term maintenance of the common driveway.

RESOLVED FURTHER, that the approval of the Planning Commission/City Council and any conditions of that approval shall not extend to any particulars set forth in the documents submitted for the project which are inconsistent with or in violation of any applicable law, including but not limited to Chapters 5 and 17 of the City Code, nor does the approval extend to matters not set forth, or inadequately represented, in submitted documents (whether or not consistent with applicable law). The City reserves the right to require compliance with applicable laws and to attach conditions after initial approval is given, if noncompliance is discovered or additional conditions are considered necessary and appropriate in light of Commission/Council findings.

Moved by Summer, Seconded by Hege

Ayes: Chang, Greenman, Hege, Summer, Thiel

Noes: None

Absent: Levine

With regard to #1 Maxwelton, the Commission, with the exception of Chairman Greenman, objected to the addition of the 3<sup>rd</sup> garage parking space because of the impact this parking caused in substantially increasing the height of the retaining wall. The majority felt that the increased height, coupled with its closer proximity to the street, could not be satisfactorily mitigated by the proposed landscaping screen. Chairman Greenman felt that the proposed landscaping screen would successfully mitigate the wall's increased height, especially when considering the benefits of the creation of additional off-street parking in the Maxwelton neighborhood. The Commission as a whole

supported the other, non-garage/bedroom/retaining wall aspects of the revised design.

**Resolution 89-DR-05**

WHEREAS, Mr. Stephen Parker is requesting permission to modify a previously approved new residence to include the addition of two rooms eligible for use as bedrooms; a new third garage space; and the proposed 19’6” high retaining wall at 1 Maxwellton Road, Piedmont, California, which construction requires design review; and

WHEREAS, after reviewing the application, plans and any and all testimony and documentation submitted in connection with such application, and after having visited subject property, the Piedmont Planning Commission finds that the proposal does not conform with the criteria and standards of Section 17.20.9 of the Piedmont City Code:

1. The design of the improvement is not desirable, namely the increased height of the retaining wall necessitated by the design and placement of third parking space on the lot, is not as aesthetically pleasing as the previously approved design because of the additional height and bulk imposed on the streetscape and across the canyon; which height and bulk cannot be rapidly mitigated by the proposed landscaping.
2. The design of the improvement does have a substantial adverse effect on neighboring properties because of the creation of an extremely bulky, monolithic structure, both taller and closer to the street which is not consistent with the City’s Design Review Guidelines.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission denies, without prejudice, design review for proposed modifications relating to the addition of bedrooms, a third garage parking space and modifications to the retaining wall at 1 Maxwellton Road, Piedmont, California, in accordance with the plans and specifications on file with the City.

Moved by Summer, Seconded by Hege  
Ayes: Chang, Hege, Summer, Thiel  
Noes: Greenman  
Absent: Levine

**Resolution 89-DR-05(2)**

WHEREAS, Mr. Stephen Parker is requesting permission to modify a previously approved new residence including: stylistic exterior alterations; modifications to the patios including a new patio trellis; window and door modifications; changes to the exterior lights; grade changes; modifications to the driveway to permit additional parking; and modifications to the retaining walls (except to the proposed 19’6” high retaining wall previously denied) located at 1 Maxwellton Road, Piedmont, California, which construction requires design review; and

WHEREAS, after reviewing the application, plans and any and all testimony and documentation submitted in connection with such application, and after having visited subject property, the Piedmont Planning Commission finds that the proposal conforms with the criteria and standards of Section 17.20.9 of the Piedmont City Code:

1. The design of the improvement is desirable because it is consistent with the proposed structure, in particular the roof, windows and materials are aesthetically pleasing as a whole and harmonious with proposed development.
2. The design of the improvement does not have a substantial adverse effect on neighboring properties because there is no change from the previously approved plan in terms of the project's impact on neighboring views, light or privacy.
3. The design does not adversely affect pedestrian safety, vehicular traffic, or the convenience of either pedestrians or vehicles. The parking situation will be improved by the "open parking" situation available to both #1 and #3 Maxwellton.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves design review for proposed modifications relating to stylistic exterior alterations; modifications to the patios including a new patio trellis; window and door modifications; changes to the exterior lights; grade changes; modifications to the driveway to permit additional parking; and modifications to the retaining walls (except to the proposed 19'6" high retaining wall previously denied) at 1 Maxwellton Road, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

1. The approved plans are those submitted on March 30, 2005, after neighbors were notified of the project and the plans were available for public review;
2. Based on the scope and nature of the proposed landscape and development plans, a best management practice plan for construction which complies with the new Alameda Countywide Clean Water Program General and Residential Conditions of Approval (containing a storm water pollution prevention plan which will be required for earthwork operations) will need to be developed by the applicant prior to obtaining a building permit;
3. Based on the scope and nature of the proposed project, the applicant shall submit a construction time-line to ensure that the construction is completed in a reasonable amount of time. The construction time-line must be approved by staff prior to the issuance of building permits, and shall specify a date that the application shall be scheduled for a rehearing with the Planning Commission if the schedule is not met. The Planning Commission may attach conditions necessary to ensure timely completion of the construction, including the requirement of a financial instrument such as a performance bond or deposit;
4. Prior to the issuance of a building permit, the plans shall eliminate all existing inconsistencies. During building permit review, staff will review the plans and determine whether or not the final coordinated design requires further design review or variances;



5. Prior to the issuance of a building permit, the applicant shall apply for and receive approval of an encroachment permit for the construction of any features within the City right-of-way;
6. Prior to the issuance of a building permit, the applicant shall submit a construction management plan which shall be subject to staff review and approval. The City reserves the right to make changes to the plan if necessary. Vehicular and pedestrian access for 7 Maxwellton Road must be maintained throughout construction;
7. Because it is a new occupancy, the house must be fully sprinkled pursuant to NFPA 13R standards and the Piedmont Building Code;
8. A Fire Department Connection (FDC) is required on the outside of the structure. Prior to the issuance of a building permit, the final design and location shall be subject to Fire Department approval;
9. Due to the slope and angle of the proposed driveway, the Fire Department will require a standpipe system to make accessing a water supply to the area less difficult. The standpipe system is a large diameter pipe that will ascend from the road to an area near the structures;
10. Prior to the issuance of a building permit, the final design of the roadway configuration and section must be approved by the Fire Department, and be able to accommodate the gross vehicle weight of Department apparatus;
11. The existing trees shall be preserved within the 20 ft. front setback area;
12. A final landscaping plan shall be submitted for staff review and approval prior to the issuance of a building permit and the project's landscape architect shall be required to certify that landscape plant material and irrigation systems were installed in accordance with said plan. Prior to the issuance of a certificate of occupancy. The landscape plan shall propose appropriate landscape screening to the large retaining walls to the south of the driveway retaining walls. Low growing groundcover not exceeding 12 inches in height shall be installed along the driveway and frontage area of the intersection of the driveway with Maxwellton Road and shall be maintained at this height for perpetuity. This condition shall also be designated in the final landscaping plan;
13. A traffic-viewing mirror be installed near the driveway mouth to enable drivers to see on-coming traffic;
14. The "sight-line" retaining wall, including all improvements specified by the Planning Commission on June 14, 2004 (application #03-0287), must be constructed prior to the construction of this residence;
15. Discrepancies were noted regarding the status of the sewer easements. The City needs to verify the accuracy of the

existing and proposed easement locations prior to the issuance of a building permit or entitlement. The applicant may want to contact his title company and get an updated report to aid his engineer/surveyor in clearing up the discrepancies noted in a separate Summary of Comments;

16. Confirm the status and location of the existing sewer and easements. Provide record easements and quitclaims for City sewer line. Verify the status of the realigned sewer in 91-301100 and the status of the original sewer easement 8092 OR 169;
17. Applicant to confirm that proposed realignment of City sewer is placed in correct easement;
18. All new sewer easements and quitclaims shall be filed concurrently;
19. All legals and plats to be submitted for review and approval by City Engineer prior to recording. Legal and plats to be signed and stamped by engineer/surveyor;
20. Copies of all new recorded easements and quitclaims to be provided prior to the issue of any building permit;
21. A utility and access easement for a portion of 7 Maxwellton was granted to 1 & 3 Maxwellton, however there is a note regarding a quitclaim that is confusing as to what it is in regards to. Applicant should clarify the status of this issue;
22. Plans submitted for building permit approval must address the following issues:
  - a. A separate grading plan should be included showing location and height of all retaining walls, slope ratio of banks and conforms along perimeter of boundary. The design must be consistent with recommendations in the soils report.
  - b. Plans shall include elevations at grade breaks and slope of driveway. Maximum driveway slope is 20%. The grade break at the driveway entry off Maxwellton must address vehicles bottoming out on approach.
  - c. Both civil and retaining wall plans must show the location and clearance of storm water and other utilities with footing of walls.
23. A performance bond for the completion of the driveway, bridge, retaining wall and the irrigation and landscaping in front of this retaining wall shall be required. The amount of the performance bond shall be determined by the Director of Public Works. The retaining wall shall be earth-tone in color to minimize its visual impact, subject to staff review;
24. The existing "Weber" retaining wall and its footings shall not be disturbed;

25. Should the project be abandoned after its start because of cost over-runs, a guard rail from the edge of the driveway back to grade shall be installed so there is a closure at the dead-end of the driveway. In addition, continued access through 3 Maxwellton to 7 Maxwellton shall be provided. Costs to cover implementation of these two conditions shall be included in the aforementioned performance bond.
26. The City Planner is directed to defer for Planning Commission review and action any changes made to the approved plans deemed to be significant.
27. Prior to the issuance of a building permit, the applicant shall submit an agreement, subject to the approval of the City Attorney, that addresses the common guest parking spaces near the mutual property line, access for the common driveway, and long term maintenance of the common driveway.

RESOLVED FURTHER, that the approval of the Planning Commission/City Council and any conditions of that approval shall not extend to any particulars set forth in the documents submitted for the project which are inconsistent with or in violation of any applicable law, including but not limited to Chapters 5 and 17 of the City Code, nor does the approval extend to matters not set forth, or inadequately represented, in submitted documents (whether or not consistent with applicable law). The City reserves the right to require compliance with applicable laws and to attach conditions after initial approval is given, if noncompliance is discovered or additional conditions are considered necessary and appropriate in light of Commission/Council findings.

Moved by Summer, Seconded by Hege

Ayes: Chang, Greenman, Hege, Summer, Thiel

Noes: None

Absent: Levine

**PIEDMONT CITY COUNCIL**

Regular Meeting Minutes for Monday, November 15, 2004

A Regular Session of the Piedmont City Council was held November 15, 2004, in the City Hall Council Chambers at 120 Vista Avenue. In accordance with Government Code Section 54954.2(a) the agenda for this meeting was posted for public inspection on November 10, 2004.

- CALL TO ORDER** Mayor Bruck called the meeting to order at 7:30 p.m. with the Pledge of Allegiance.
- ROLL CALL** Present: Mayor Michael Bruck, Vice Mayor Nancy McEnroe and Councilmembers Dean Barbieri and Jeff Wieler
- Absent: Councilmember Abe Friedman
- Staff: City Administrator Geoff Grote, City Attorney George Peyton, Public Works Director Larry Rosenberg, Fire Chief John Speakman, Recreation Director Mark Delventhal, City Clerk Ann Swift, City Planner Kate Black, Building Official Chester Nakahara, City Engineer Vern Phillips and Recording Secretary Chris Harbert
- CONSENT CALENDAR** The following items were considered under one vote by the Council:
- Minutes** Approves as submitted Council meeting minutes of November 1, 2004
  - Street Closure** Approves the request by the Piedmont High School Cross-Country Team to close City streets on November 25, 2004, for the team's annual *Turkey Trot* fundraiser
  - Conditional Use** Approves a Conditional Use Permit for Kehilla Community Synagogue at 1300 Grand Avenue as recommended by the Planning Commission on November 8, incorporating the Commission's findings as set forth in Resolution 459-CUP-04 and subject to the following conditions:
    - a) A 10-year term for the conditional use permit;
    - b) Clarification of additional hours of staff presence on site shall be made by the applicant prior to the issuance of the conditional use permit;
    - c) A carpool plan associated with religious school operations shall be submitted for staff approval prior to the issuance of the conditional use permit.
  - Conditional Use** Approves a Conditional Use Permit for Joshua B. Bernstein, DDS at 1345 Grand Avenue, Suite 201, as recommended by the Planning Commission on November 8, 2004, incorporating the Commission's findings as set forth in Resolution 460-CUP-04 and subject to the following conditions:
    - b) A 10-year term for the conditional use permit;

- c) Prior to the final approval of the building permit for tenant improvements to the dental office, a second means of egress must be provided for the “residual suite.” Since it appears that access will need to occur through part of the proposed dental office, a revised floor plan shall be subject to staff review and approval.

**Resolution 74-04**

RESOLVED, that the City Council adopts the consent calendar as noted.

Moved by Wieler, Seconded by Barbieri

Ayes: Bruck, McEnroe, Barbieri, Wieler

Noes: None

Absent: Friedman

(1000; 0340)

**PUBLIC FORUM**

Susan Schroeder, a *Piedmont Turkey Trot* organizer, thanked the Council for its support of the high school’s annual fund raising foot race and encouraged residents to participate in the event.

**REGULAR CALENDAR**

The Council considered the following items of regular business:

**Hiring Freeze**

The City Administrator recommended that the Council lift its *freeze* on the hiring of replacement public safety employees in light of the passage of Measure W (renewal of the City’s municipal parcel tax) on the November 2 ballot. He noted that voters authorized this tax to protect vital services and therefore it is now appropriate to lift the hiring ban for public safety positions that were on hold pending the outcome of the election. The Administrator stated that there are currently three fire department vacancies and one police officer vacancy. The Administrator recommended deferring recruitment for a new police chief and possible replacement of a police captain position until later in the fiscal year.

**Resolution 75-04**

RESOLVED, that the City Council authorizes the police and fire departments to recruit for three replacement personnel in the fire department and one police officer position in the police department.

Moved by Wieler, Seconded by Barbieri

Ayes: Bruck, McEnroe, Barbieri, Wieler

Noes: None

Absent: Friedman

(0750)

**Public Hearing:  
Appeal of Planning  
Commission Decision,  
1 & 3 Maxwellton Road**

The City Planner stated that Mr. and Mrs. Edward Weber are appealing the Planning Commission’s September 13 conditional approval of design review applications for proposed construction of single family residences at 1 and 3 Maxwellton Road. The City Planner reviewed the lengthy history of the proposed development of 1 and 3 Maxwellton Road, noting that Mr. Ted Dang received City approval for construction in 1999 and 2000 but these approvals have since expired. Mr. Dang is in the process of selling the properties to Mr. Stephen Parker and in September 13, 2004, the Planning Commission conditionally approved proposed modifications to the originally approved designs. However, Mr. Parker’s new architect has discovered numerous discrepancies and errors in the approved plans and has requested a continuance until December 6 to correct these discrepancies. Mr. and Mrs. Weber’s appeal focused on driveway construction

sequencing and retaining wall issues rather than objections to the actual design of the proposed homes. Therefore, the City Planner recommended that the Council proceed with testimony regarding the appeal and then decide whether or not to grant the continuance.

**Public testimony** was received from:

Robert Weber, speaking on behalf of his parents, stated that his parents have no objection to the proposed design or construction of the proposed homes. The purpose of the appeal is to request the Council: (1) to require that construction of the driveway be completed before construction of the homes begin (the driveway serves 1, 3 and 7 Maxwellton Road); (2) to incorporate all the conditions of approval set forth by the Planning Commission; (3) address the issue of the proposed garage at 1 Maxwellton being structurally sound given the “fill” characteristics of its proposed location; and (4) to insure that the existing retaining wall located both on his parents’ property and that of 3 Maxwellton is not disturbed during construction because of its importance given the landslide history of the hillside. Mr. Weber emphasized his parents’ great concern that the project could be “abandoned” because of the significant costs involved in constructing on the difficult sites and their fear that access to their home could be impeded if the project was abandoned and driveway was left unfinished. The Council reviewed the performance bond provisions of the Planning Commission’s conditional approval as well as the prohibitions against disturbing the retaining wall and footings. Mr. Weber acknowledged that these conditions address and satisfy his parents’ driveway and retaining wall related concerns. Mr. Weber was also advised that geo-technical and engineering issues will be addressed at the working drawing/building permit stage of the process. The Council noted its intent to incorporate all of the Planning Commission’s approval conditions into the Council’s decision.

The City Building Official and the City Engineer described the type of geo-technical engineering analysis and on-site verifications which will take place in connection with the proposed project as well as how the amount of the performance bond will be determined.

Betsy Miller objected to the fact that the proposed Maxwellton development has gone on for the last 6 to 8 years and preliminary requirements regarding retaining and sight line walls have still not been completely resolved. She voiced concern that actual construction could be endless, especially if approved plans are not even accurate. She requested that driveway improvements be required as an initial phase of construction since the existing driveway is dangerous and incapable of handling heavy construction vehicles. She also noted that as part of Mr. Weber’s lot line adjustment and property sale to Mr. Dang, sewer access from her vacant lot has been lost. Therefore, she requested that the retaining wall for 3 Maxwellton contain a “slip sleeve” to enable a sewer line to be installed in the event her currently vacant lot is ever developed.

Douglas Vance voiced safety concerns regarding the driveway, garage placement and ingress/egress onto Moraga Avenue. He also felt that the large size and number of retaining walls necessary for the driveway will result in an echo chamber across the canyon and requested that acoustical features be added to the wall as sound buffers. He also noted that in 2001 the City required that the driveway be completed prior to

house construction for safety reasons and he objected to the fact that this condition is no longer being required.

Stephen Parker stated that he has purchased 3 Maxwellton and is a potential buyer of 1 Maxwellton. He stated that all of the Planning Commission conditions of approval are acceptable. He noted that he is reluctant to complete the driveway prior to constructing the homes because of the likelihood that the driveway will be damaged during construction.

In response to Council questioning, the City Planner explained the process whereby corrections to the approved plans will be reviewed by staff and either approved at the staff level or deferred to the Planning Commission for review and action.

**Resolution 76-04**

RESOLVED, that the City Council denies Mr. Ted Dang and Mr. Stephen Parker's request to continue consideration of their proposed construction at 1 and 3 Maxwellton Road so that approved plans can be revised to correct inaccuracies.

Moved by Wieler, Seconded by Barbieri

Ayes: Bruck, McEnroe, Barbieri, Wieler

Noes: None

Absent: Friedman

(0080)

**Resolution 77-04**

WHEREAS, Mr. Ted Dang is requesting permission to construct a new single family residence with four bedrooms, four and a half baths, a living room, dining room, kitchen, breakfast nook, family room, study, laundry room and 2-car garage. Site improvements include retaining walls and modifications to the existing driveway located at 1 Maxwellton Road, Piedmont, California, which construction requires design review; and

WHEREAS, the Piedmont Planning Commission conditionally approved Mr. Dang's design review application on September 13, 2004, and this conditional approval was appealed by Mr. and Mrs. Edward Weber; and

WHEREAS, after reviewing the application, plans and any and all testimony and documentation submitted in connection with such application and appeal, and after having visited subject property, the Piedmont City Council finds that the proposal conforms with the criteria and standards of Section 17.20.9 of the Piedmont City Code:

1. The design of the improvement is desirable because it complies with Design Review Guidelines I-1(b), I-1(d), I-2 and I-5 in that the architectural style of the proposed homes at 1 and 3 Maxwellton are consistent with each other and given the property's rather isolated site, these are the only homes within visual proximity. The design of the proposed home are appropriate for the lot, are compatible with the topography and avoid the appearance of bulk and mass by following the contours and slope of the lot. The exterior design elements are aesthetically pleasing as a whole and harmonious with each other in that the design of the homes incorporate an uniformity of materials,

surface treatments, roof pitches, window treatments and the project adheres to the slope of the hillside.

2. The design of the improvement does not have a substantial adverse effect on neighboring properties because the landscape plan will further integrate the house with the lot and given the isolated nature of the site, neighbor views, light or privacy are not affected.

3. The design does not adversely affect pedestrian safety, vehicular traffic, or the convenience of either pedestrians or vehicles provided the proposed driveway is constructed as designed and approved by City engineering and planning staff.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont City Council denies Mr. and Mrs. Weber's appeal and upholds the Planning Commission's approval of the design review application of Mr. Dang for construction at 1 Maxwellton Road, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

1. The approved plans are those submitted on September 1, 2004, after neighbors were notified of the project and the plans were available for public review;
2. Based on the scope and nature of the proposed landscape and development plans, a best management practice plan for construction which complies with the new Alameda Countywide Clean Water Program General and Residential Conditions of Approval (containing a storm water pollution prevention plan which will be required for earthwork operations) will need to be developed by the applicant prior to obtaining a building permit;
3. Based on the scope and nature of the proposed project, the applicant shall submit a construction time-line to ensure that the construction is completed in a reasonable amount of time. The construction time-line must be approved by staff prior to the issuance of building permits, and shall specify a date that the application shall be scheduled for a rehearing with the Planning Commission if the schedule is not met. The Planning Commission may attach conditions necessary to ensure timely completion of the construction, including the requirement of a financial instrument such as a performance bond or deposit;
4. Prior to the issuance of a building permit, the plans shall eliminate all existing inconsistencies. During building permit review, staff will review the plans and determine whether or not the final coordinated design requires further design review or variances;
5. Prior to the issuance of a building permit, the applicant shall apply for and receive approval of an encroachment permit for the construction of any features within the City right-of-way;
6. Prior to the issuance of a building permit, the applicant shall submit a construction management plan which shall be subject to staff review and approval. The City reserves the right to



make changes to the plan if necessary. Vehicular and pedestrian access for 7 Maxwellton Road must be maintained throughout construction;

7. Because it is a new occupancy, the house must be fully sprinkled pursuant to NFPA 13R standards and the Piedmont Building Code;
8. A Fire Department Connection (FDC) is required on the outside of the structure. Prior to the issuance of a building permit, the final design and location shall be subject to Fire Department approval;
9. Due to the slope and angle of the proposed driveway, the Fire Department will require a standpipe system to make accessing a water supply to the area less difficult. The standpipe system is a large diameter pipe that will ascend from the road to an area near the structures;
10. Prior to the issuance of a building permit, the final design of the roadway configuration and section must be approved by the Fire Department, and be able to accommodate the gross vehicle weight of Department apparatus;
11. The existing trees, to the extent possible, be preserved within the 20 ft. front setback area;
12. A final landscaping plan shall be submitted for staff review and approval prior to the issuance of a building permit and the project's landscape architect shall be required to certify that landscape plant material and irrigation systems were installed in accordance with said plan. Prior to the issuance of a certificate of occupancy. The landscape plan shall propose appropriate landscape screening to the large retaining walls to the south of the driveway retaining walls. Low growing groundcover not exceeding 12 inches in height shall be installed along the driveway and frontage area of the intersection of the driveway with Maxwellton Road and shall be maintained at this height for perpetuity. This condition shall also be designated in the final landscaping plan;
13. A traffic-viewing mirror be installed near the driveway mouth to enable drivers to see on-coming traffic;
14. The "sight-line" retaining wall, including all improvements specified by the Planning Commission on June 14, 2004 (application #03-0287), must be constructed prior to the construction of this residence;
15. Discrepancies were noted regarding the status of the sewer easements. The City needs to verify the accuracy of the existing and proposed easement locations prior to the issuance of a building permit or entitlement. The applicant may want to contact his title company and get an updated report to aid his engineer/surveyor in clearing up the discrepancies noted in a separate Summary of Comments;

16. Confirm the status and location of the existing sewer and easements. Provide record easements and quitclaims for City sewer line. Verify the status of the realigned sewer in 91-301100 and the status of the original sewer easement 8092 OR 169;
17. Applicant to confirm that proposed realignment of City sewer is placed in correct easement;
18. All new sewer easements and quitclaims shall be filed concurrently;
19. All legals and plats to be submitted for review and approval by City Engineer prior to recording. Legal and plats to be signed and stamped by engineer/surveyor;
20. Copies of all new recorded easements and quitclaims to be provided prior to the issue of any building permit;
21. A utility and access easement for a portion of 7 Maxwellton was granted to 1 & 3 Maxwellton, however there is a note regarding a quitclaim that is confusing as to what it is in regards to. Applicant should clarify the status of this issue;
22. Plans submitted for building permit approval must address the following issues;
23. A separate grading plan should be included showing location and height of all retaining walls, slope ratio of banks and conforms along perimeter of boundary. The design must be consistent with recommendations in the soils report.
  - a. Plans shall include elevations at grade breaks and slope of driveway. Maximum driveway slope is 20%. The grade break at the driveway entry off Maxwellton must address vehicles bottoming out on approach.
  - b. Both civil and retaining wall plans must show the location and clearance of storm water and other utilities with footing of walls.
  - c. New driveway must be constructed in such a manner as to protect the structural stability of the existing retaining wall.
24. A performance bond for the completion of the driveway, bridge, retaining wall and the irrigation and landscaping in front of this retaining wall shall be required. The amount of the performance bond shall be determined by the Director of Public Works. The retaining wall shall be earth-tone in color to minimize its visual impact, subject to staff review;
25. The existing “Weber” retaining wall and its footings shall not be disturbed;
26. Should the project be abandoned after its start because of cost over-runs, a guard rail from the edge of the driveway back to

grade shall be installed so there is a closure at the dead-end of the driveway. In addition, continued access through 3 Maxwellton to 7 Maxwellton shall be provided. Costs to cover implementation of these two conditions shall be included in the aforementioned performance bond.

27. The City Planner is directed to defer for Planning Commission review and action any changes made to the approved plans deemed to be significant.

RESOLVED FURTHER, that the approval of the Planning Commission/City Council and any conditions of that approval shall not extend to any particulars set forth in the documents submitted for the project which are inconsistent with or in violation of any applicable law, including but not limited to Chapters 5 and 17 of the City Code, nor does the approval extend to matters not set forth, or inadequately represented, in submitted documents (whether or not consistent with applicable law). The City reserves the right to require compliance with applicable laws and to attach conditions after initial approval is given, if noncompliance is discovered or additional conditions are considered necessary and appropriate in light of Commission/Council findings.

Moved by Wieler, Seconded by Barbieri

Ayes: Bruck, McEnroe, Barbieri, Wieler

Noes: None

Absent: Friedman

(0080)

#### **Resolution 78-04**

WHEREAS, Mr. Ted Dang is requesting permission to construct a new single family residence with three bedrooms, two and a half baths, a living room, dining room, kitchen, family room, den, laundry room and 2-car garage. Site improvements include retaining walls and modifications to the existing driveway located at 3 Maxwellton Road, Piedmont, California, which construction requires design review; and

WHEREAS, the Piedmont Planning Commission conditionally approved Mr. Dang's design review application on September 13, 2004, and this conditional approval was appealed by Mr. and Mrs. Edward Weber; and

WHEREAS, after reviewing the application, plans and any and all testimony and documentation submitted in connection with such application and appeal, and after having visited subject property, the Piedmont Planning Commission finds that the proposal conforms with the criteria and standards of Section 17.20.9 of the Piedmont City Code:

1. The design of the improvement is desirable because it complies with Design Review Guidelines I-1(b), I-1(d), I-2 and I-5 in that the architectural style of the proposed homes at 1 and 3 Maxwellton are consistent with each other and given the property's rather isolated site, these are the only homes within visual proximity. The design of the proposed home are appropriate for the lot, are compatible with the topography and avoid the appearance of bulk and mass by following the contours and slope of the lot. The exterior design elements are aesthetically pleasing as a whole and harmonious with each other in that the design of the homes incorporate an uniformity of materials,

surface treatments, roof pitches, window treatments and the project adheres to the slope of the hillside.

2. The design of the improvement does not have a substantial adverse effect on neighboring properties because the landscape plan will further integrate the house with the lot and given the isolated nature of the site, neighbor views, light or privacy are not affected.

3. The design does not adversely affect pedestrian safety, vehicular traffic, or the convenience of either pedestrians or vehicles provided the proposed driveway is constructed as designed and approved by City engineering and planning staff.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont City Council denies Mr. and Mrs. Weber's appeal and upholds the Planning Commission's conditional approval of the design review application of Mr. Dang for construction at 3 Maxwellton Road, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

28. The approved plans are those submitted on September 1, 2004, after neighbors were notified of the project and the plans were available for public review;
29. Based on the scope and nature of the proposed landscape and development plans, a best management practice plan for construction which complies with the new Alameda Countywide Clean Water Program General and Residential Conditions of Approval (containing a storm water pollution prevention plan which will be required for earthwork operations) will need to be developed by the applicant prior to obtaining a building permit;
30. Based on the scope and nature of the proposed project, the applicant shall submit a construction time-line to ensure that the construction is completed in a reasonable amount of time. The construction time-line must be approved by staff prior to the issuance of building permits, and shall specify a date that the application shall be scheduled for a rehearing with the Planning commission if the schedule is not met. The Planning Commission may attach conditions necessary to ensure timely completion of the construction, including the requirement of a financial instrument such as a performance bond or deposit;
31. Prior to the issuance of a building permit, the plans shall eliminate all existing inconsistencies. During building permit review, staff will review the plans and determine whether or not the final coordinated design requires further design review or variances;
32. Prior to the issuance of a building permit, the applicant shall apply for and receive approval of an encroachment permit for the construction of any features within the City right-of-way;
33. Prior to the issuance of a building permit, the applicant shall submit a construction management plan which shall be subject to staff review and approval. The City reserves the right to

make changes to the plan if necessary. Vehicular and pedestrian access for 7 Maxwellton Road must be maintained throughout construction;

34. Because it is a new occupancy, the house must be fully sprinkled pursuant to NFPA 13R standards and the Piedmont Building Code;
35. A Fire Department Connection (FDC) is required on the outside of the structure. Prior to the issuance of a building permit, the final design and location shall be subject to Fire Department approval;
36. Due to the slope and angle of the proposed driveway, the Fire Department will require a standpipe system to make accessing a water supply to the area less difficult. The standpipe system is a large diameter pipe that will ascend from the road to an area near the structures;
37. Prior to the issuance of a building permit, the final design of the roadway configuration and section must be approved by the Fire Department, and be able to accommodate the gross vehicle weight of Department apparatus;
38. The existing trees, to the extent possible, be preserved within the 20 ft. front setback area;
39. A final landscaping plan shall be submitted for staff review and approval prior to the issuance of a building permit and the project's landscape architect shall be required to certify that landscape plant material and irrigation systems were installed in accordance with said plan. Prior to the issuance of a certificate of occupancy. The landscape plan shall propose appropriate landscape screening to the large retaining walls to the south of the driveway retaining walls. Low growing groundcover not exceeding 12 inches in height shall be installed along the driveway and frontage area of the intersection of the driveway with Maxwellton Road and shall be maintained at this height for perpetuity. This condition shall also be designated in the final landscaping plan;
40. A traffic-viewing mirror be installed near the driveway mouth to enable drivers to see on-coming traffic;
41. The "sight-line" retaining wall, including all improvements specified by the Planning Commission on June 14, 2004 (application #03-0287), must be constructed prior to the construction of this residence;
42. Discrepancies were noted regarding the status of the sewer easements. The City needs to verify the accuracy of the existing and proposed easement locations prior to the issuance of a building permit or entitlement. The applicant may want to contact his title company and get an updated report to aid his engineer/surveyor in clearing up the discrepancies noted in a separate Summary of Comments;

43. Confirm the status and location of the existing sewer and easements. Provide record easements and quitclaims for City sewer line. Verify the status of the realigned sewer in 91-301100 and the status of the original sewer easement 8092 OR 169;
44. Applicant to confirm that proposed realignment of City sewer is placed in correct easement;
45. All new sewer easements and quitclaims shall be filed concurrently;
46. All legals and plats to be submitted for review and approval by City Engineer prior to recording. Legal and plats to be signed and stamped by engineer/surveyor;
47. Copies of all new recorded easements and quitclaims to be provided prior to the issue of any building permit;
48. A utility and access easement for a portion of 7 Maxwellton was granted to 1 & 3 Maxwellton, however there is a note regarding a quitclaim that is confusing as to what it is in regards to. Applicant should clarify the status of this issue;
49. Plans submitted for building permit approval must address the following issues;
50. A separate grading plan should be included showing location and height of all retaining walls, slope ratio of banks and conforms along perimeter of boundary. The design must be consistent with recommendations in the soils report.
  - a. Plans shall include elevations at grade breaks and slope of driveway. Maximum driveway slope is 20%. The grade break at the driveway entry off Maxwellton must address vehicles bottoming out on approach.
  - b. Both civil and retaining wall plans must show the location and clearance of storm water and other utilities with footing of walls.
  - c. New driveway must be constructed in such a manner as to protect the structural stability of the existing retaining wall.
24. Prior to the issuance of a building permit, a licensed arborist must be retained to prepare a report regarding the long-term conservation of the oak tree on the property line abutting 81 Maxwellton. The report shall identify tree preservation measures during and after construction to preserve the health of the tree. These measures must be implemented as part of the building permit plans;
25. A performance bond for the completion of the driveway, bridge, retaining wall and the irrigation and landscaping in front of this retaining wall shall be required. The amount of the performance bond shall be determined by the Director of

Public Works. The retaining wall shall be earth-tone in color to minimize its visual impact, subject to staff review;

26. The existing “Weber” retaining wall and its footings shall not be disturbed;
  1. Should the project be abandoned after its start because of cost over-runs, a guard rail from the edge of the driveway back to grade shall be installed so there is a closure at the dead-end of the driveway. In addition, continued access through 3 Maxwellton to 7 Maxwellton shall be provided. Costs to cover implementation of these two conditions shall be included in the aforementioned performance bond;
  2. A construction fence shall be erected along the rear property line;
  3. Prior to the issuance of a building permit, the plans shall be revised to show the construction of a slip sleeve in the rear retaining wall of 3 Maxwellton Road;
  4. The City Planner is directed to defer for Planning Commission review and action any changes made to the approved plans deemed to be significant.

RESOLVED FURTHER, that the approval of the Planning Commission/City Council and any conditions of that approval shall not extend to any particulars set forth in the documents submitted for the project which are inconsistent with or in violation of any applicable law, including but not limited to Chapters 5 and 17 of the City Code, nor does the approval extend to matters not set forth, or inadequately represented, in submitted documents (whether or not consistent with applicable law). The City reserves the right to require compliance with applicable laws and to attach conditions after initial approval is given, if noncompliance is discovered or additional conditions are considered necessary and appropriate in light of Commission/Council findings.

Moved by Wieler, Seconded by Barbieri

Ayes: Bruck, McEnroe, Barbieri, Wieler

Noes: None

Absent: Friedman