

City of Piedmont  
COUNCIL AGENDA REPORT

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DATE: October 21, 2019

TO: Mayor and Council

FROM: Sara Lillevand, City Administrator

SUBJECT: Appeal of the Planning Commission's Decision to Deny a Design Review Permit Application for a New Accessory Structure at 89 Maxwelton Road (Application #19-0195)

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RECOMMENDATION:

Adopt a resolution (Exhibit G, pages 61-67) overruling the Planning Commission's denial of a design review permit for a new accessory structure at 89 Maxwelton Road, and approving design review permit application number 19-0195, subject to 24 conditions of approval.

EXECUTIVE SUMMARY:

Joyce Tang and Keven Kwok have appealed the August 12, 2019 decision of the Planning Commission to deny an application for a new accessory structure on the property they own at 89 Maxwelton Road. The Commission reviewed the application and proposed plans, read the report prepared by staff, visited the site and viewed the story poles, considered the written comments submitted by members of the public, held a public hearing, took testimony from the applicant team and the public, deliberated the proposed project at length, and voted 3 to 2 to deny the application. In sum, the timely appeal, submitted on August 21, 2019, asserts that the Planning Commission made significant errors in making its decision, that the decision was not supported by the weight of the evidence, and that the Commission's denial of the application was in violation of state law. Staff recommends that the City Council overrule the action taken by the Planning Commission and approve the application for a design review permit, subject to conditions of approval on the basis that the Commission's denial of the application for a new accessory structure was not supported by the weight of the evidence and that there were significant errors in the application of the Piedmont Design Guidelines and the requirements of Chapter 17.

BACKGROUND:

This is an appeal of the August 12, 2019, Planning Commission decision to deny an application submitted by Joyce Tang and Keven Kwok. The new, one-story accessory structure is proposed to be located at the rear of the steeply down-sloping lot. The application for the new structure was denied without prejudice by the Planning Commission on August 12, 2019. The appeal was filed on August 21, 2019 by the applicants, Joyce Tang and Keven Kwok.

NOTE: The subject application was submitted concurrently with a separate application for an Accessory Dwelling Unit (ADU) Permit. This Accessory Dwelling Unit Permit application will be ministerially processed by staff under a separate application, #18-0330 and is not subject to public notice or review.

### **Subject Property Description**

Applicants have obtained a Variance and Design Review Permit (#18-0331) for the construction of a new primary residence on the property at 89 Maxwellton Road. The primary residence would involve construction of a new 3,900-square-foot residence and 487-square-foot, two-car attached garage. Variances were required for construction of a primary structure in the street yard setback (north) and for construction of a patio within the street yard setback. Currently, the lot is undeveloped and has approximately thirteen mature redwood trees, several oaks, and other trees, and a building permit is being processed.

### **The Application on Appeal**

The application for this design review permit to construct a new accessory structure proposes to:

- Remove two oak trees and excavate and off-haul approximately 78 cubic yards of soil at the rear of the lot;
- Construct a new 1-story accessory structure containing approximately 798-square-feet of habitable space, accessed by on-grade railroad tie steps and pathway that descend approximately 38 feet from street level to the entrance of the structure. Additional proposed features include retaining walls, a 154-square-foot patio, and exterior lighting along the pathway and at the structure's entrance.

The project permitted under the previously approved Variance and Design Review Permit (#18-0331) would result in 3,932-square-foot house with an additional 369-square-foot space located beneath the driveway bridge. With the addition of the new 798-square-foot accessory structure proposed in this application, there would be a total of 5,099 square feet of floor area on the lot. The resulting floor area ratio would be 50.6%, which is in excess of the 45% limit for lots greater than 10,000 square feet in area. However, City Code section 17.38.070.B authorizes the Planning Commission to approve a floor area ratio exemption for a new primary residence and accessory dwelling unit, without imposing rent restriction as follows: the area of an accessory dwelling unit will not count toward the total floor area ratio of the property up to 800 square feet or 10% of the lot size, whichever is less. The proposed accessory structure is eligible for this exemption.

### **COMMISSION DELIBERATIONS AND ACTION:**

Alternate Commissioner Strout sat for Commissioner Batra and joined Commissioners Levine, Alessio, Duransoy and Ramsey in review and consideration of the application. The Planning Commission reviewed all of the application materials (Exhibit D, pages 35-39, and Exhibits H and I, separate), the staff report to the Commission (Exhibit E, pages 41-53), and letters and comments received from neighbors prior to the Commission's hearing (Exhibit F, pages 55-60); and made site visits to the applicant's property.

In response to the public notice mailed on July 29, 2019, no affirmative response forms and four negative response forms were received. Copies of these comments are provided as Exhibit F, pages

55-60. As indicated in the August 12, 2019 Planning Commission meeting minutes (Exhibit A, pages 13-16), public testimony included the applicant team. Project architect, Leila Mashhoodi, stated that the design of the accessory structure matched that of the main residence, that hedges and native trees will be planted to provide privacy, and that by tucking it into the hillside terrain the height of the accessory was kept as low as possible. Property owners Kevin Kwok and Joyce Tang stated that the accessory structure was designed to minimize the overall bulk of buildings on the site and to maintain privacy with neighboring properties, noting that the highest point of the accessory structure will be lower than the floor level of the neighboring house at 81 Maxwellton Road. Public testimony also included that of neighbors Philip Stein, Jean Stein, Jack Preston and Virginia Preston, who all expressed their opinion that an additional dwelling unit would have an adverse impact on the neighborhood and public safety in the Maxwellton right-of-way.

At the close of public testimony, the Planning Commission discussed the project. Commissioners Alessio and Strout stated that the project complies with standards for approval in that the accessory structure's style and form complement and are consistent with the main house, the accessory structure has a low profile, and the accessory structure will not adversely impact the adjacent neighbor at 81 Maxwellton Road. Commissioners Levine, Ramsey and Levine stated they could not support the project because it would have a materially negative impact on the privacy of the residence at 81 Maxwellton Road, that removal of trees would have an adverse effect on nature, and that the excavation of soil, and increase in building mass and structure coverage were in excess of the construction of a new house approved in December 2018.

#### **Action Taken**

The Commission denied the application for the design review permit, with Commissioners Ramsey, Levine and Duransoy voting in favor of the motion for denial, and Commissioners Alessio and Strout voting against the motion for denial. In denying the application, the Commission made findings 1 through 5 below:

1. The proposed design is not consistent with the City's General Plan and Piedmont Design Guidelines in that the following building features are not consistent with the original architecture and neighborhood development, including bulk, and this application's proposal to increase the development area of the previously approved application does not minimize impacts on the existing terrain.
2. The design has an effect on neighboring properties' existing views, privacy, and access to direct and indirect light because the proposed new development is located within the view from 81 Maxwellton Road and does not preserve privacy for the neighbor at 81 Maxwellton Road.
3. The proposed design adversely affects pedestrian safety because access to the site is via a railroad-tie walkway to stairs that descend four stories along the property line.
4. The application does not comply with the following Design Review Guidelines and General Plan policies and programs: 3.11.03.1 (Site Design) and 5.03.01.1 (Building Design: Single-Family Residential).

5. The project is not consistent with General Plan policies and programs, including the land use element, housing element, and design and preservation element, including: Natural Resources and Sustainability Policy 14.4 (Retention of Healthy Native Trees), Design and Preservation Element Policy 28.1 (Scale, Height, and Bulk Compatibility), Lane Use Element Policy 1.2 (Neighborhood Conservation).

APPEAL INFORMATION:

**Appeal Form and Statement**

The appeal letter contends that the Planning Commission’s decision was in error because the proposed accessory structure does not require a variance from zoning standards, its design is compatible with the approved main residence, and it meets the standards for design review provided in City Code section 17.66.060. (see Exhibit C, pages 31-34). The appellants state that the Planning Commission gave no reasons for the denial. The appellants also allege that the Planning Commission’s action was in violation of state law.

**Discussion**

**A. Appeal Criteria**

Section 17.78.040 of Piedmont’s Municipal Code sets forth the standards of review. An appeal is not a de novo hearing. The City Council on appeal may overrule the action of the decision maker only if:

- a. the findings made by the decision maker as a basis for its action are not supported by the weight of the evidence;
- b. there is a significant error in the application of the requirements of this chapter 17 or other requirements of the City Code;
- c. there is a significant error in the application of the Piedmont Design Guidelines; or
- d. significant errors in the application, plans, drawings or other materials provided to the decision maker are discovered after the hearing, which were a basis of the decision.

**B. Staff Analysis of Points Raised in Appeal**

**(1) Consideration of “the ADU proposal complies with all local Piedmont Planning and Land Use Code”**

Upon further analysis, staff has determined that the findings made by the Commission to deny the project are not supported by the weight of evidence and that there are significant errors in the application of the Piedmont Design Guidelines. Below is staff’s detailed analysis of the Commission’s findings made in denying the application:

Finding for denial #1

The Planning Commission determined that the proposed design is not consistent with the City's General Plan and Piedmont Design Guidelines in that the following building features are not consistent with the original architecture and neighborhood development, including bulk, and this application's proposal to increase the development area of the previously approved application does not minimize impacts on the existing terrain.

## Staff Analysis:

The architectural style and building elements of the proposed accessory structure match those of the approved primary residence. As noted above, the bulk of the accessory structure has been minimized by “tucking” it into the hillside. In fact, several other residences in the neighborhood predate the City’s Design Guidelines and have massing that does not step down the hillside or that modified the terrain in order to have a level area on which to build the house. The lots in the neighborhood vary as to where on the property buildings are located, from at the front of the property (e.g., 12 and 16 Nellie Avenue, and 71 Maxwellton Road), to in the middle of the lot (e.g., 60, 90 and 96 Maxwellton Road), to at the rear of the lot (e.g., 3 and 5 Maxwellton Road, and 2 Abbot Way). Accordingly, the location of the accessory structure at the rear of the property is not out of character for the neighborhood. Thus, this finding is not supported by the weight of evidence.

Finding for denial #2

The Planning Commission determined that the design has an effect on neighboring properties' existing views, privacy, and access to direct and indirect light because the proposed new development is located within the view from the residence at 81 Maxwellton Road and does not preserve privacy for the neighbor at 81 Maxwellton Road.

## Staff Analysis:

The proposed accessory structure will be visible from neighboring properties and residential activities will occur in and around it. However, the Planning Commission assumed that this would cause an impact on privacy without further consideration of evidence. The relevant question is: Has the project been designed so that the impacts on views, privacy and access to light have been minimized or mitigated so that there is no adverse effect?

As defined in City Code section 17.90.010, *View* means an existing significant view involving more than the immediately surrounding properties or a view of sky, including, but not limited to, any of the following: city skyline, historic landmark, bridge, distant cities, geologic feature, significant hillside terrain, wooded canyon or ridge. The proposed accessory structure would not cause an impact on any existing significant view because existing views that may be impacted by the proposed building do not meet the Code definition. Additionally, the building is partially constructed below grade so that the roof ridge is lower in elevation than the floor level of the adjacent house at 81 Maxwellton Road. Setback requirements exist partially to ensure neighbor privacy and the project preserves neighbor privacy by complying with setback requirements. Notably, although the Code requirement

is for the accessory structure to be set back 5 feet from the side and rear property lines, the application proposes the building be set back 6 feet nine inches from the right property line and 10 feet 4 inches from the rear property line. The application also proposes to minimize impacts on privacy by providing vegetative screening between the entry path and the property line of 81 Maxwellton Road and by locating the building's main entry door and patio at least 30 feet from the closest point of the house at 81 Maxwellton Road. The proposed accessory structure is set low to the ground, is located east of the residence at 81 Maxwellton Road and will be surrounded by much taller existing vegetation. Thus, access to light, both direct and indirect, is not affected. Accordingly, the Commission's finding reflects an error in the application of the requirements of Chapter 17.

### Finding for denial #3

The Planning Commission determined that the proposed design adversely affects pedestrian safety because access to the site is via a railroad-tie walkway to stairs that descend four stories along the property line.

#### Staff Analysis:

The standard for a design review permit in City Code section 17.66.060 that, "The proposed design does not adversely affect pedestrian or vehicular safety" is meant to address safety in the public right-of-way. The proposed construction is not located in the right-of-way and does not negatively affect safety there. While the Commission expressed safety concerns over the walkway, these may be addressed through conditions of approval that the pathway and stairs be constructed of concrete, have low-voltage downward-directed path lighting, and be consistent with building code requirements for rise, run, landings and handrails. Accordingly, the Commission's finding reflects an error in the application of the requirements of Chapter 17.

### Finding for denial #4

The Commission determined application does not comply with the following Design Review Guidelines and General Plan policies and programs: 3.11.03.1 (Site Design) and 5.03.01.1 (Building Design: Single-Family Residential).

#### Staff Analysis:

Design Guideline 3.11.03.1, on-site design principles for landscape aesthetic and environmental design, calls for the design to "minimize impacts on existing terrain." Although the design for the accessory structure cuts and removes soil in order to "tuck" the building into the hillside, the cut is minimized by limiting it to the footprint of the building and patio.

Notably, the Planning Commission's application of the Design Guideline in this instance fails to harmonize this design guideline with other design guideline requirements. After applications for a design review permit to construct the primary residence were previously denied twice because the Commission found the design for the primary building in which it was built above existing grade to be excessively

bulky for the sloping hillside, and the applicants changed the design approach in a third application so that the building was “tucked” into the hillside. The Planning Commission previously determined that the approved design for the main residence thus reduced the amount of building bulk above grade by excavating cuts in the terrain so that the uphill side of the building is partially below grade and the building “steps” down the hillside grade so that the bulk of a building on its downhill side is minimized. In the application under consideration, the applicants employed the same design technique for the proposed accessory structure in order to meet Design Guideline 5.01.01.1. In denying the new accessory structure, the Commission found that the project did not meet Design Guideline 3.11.03.1 because it would result in additional soil removal beyond what was approved for construction of the main residence. However, by excavating soil and constructing the uphill side of the building partially below grade to minimize its bulk on the hillside, the project meets Design Guideline 5.01.01.1, which states, “On steeply sloping properties, it is important to minimize building bulk. This is accomplished by respecting existing topography and following the contours of the existing slope. ‘Stepping down’ with the slope reduces the building’s effective visual bulk and avoids the appearance of an excessively large, bulky building.” Thus, in order to meet Design Guideline 5.01.01.1 to minimize the bulk of a hillside home, it may be necessary to excavate and impact the terrain to a certain degree, notwithstanding Design Guideline 3.11.03.1. The Planning Commission accordingly failed to interpret Design Guideline 3.11.03.1 harmoniously in light of competing requirements of Design Guideline 5.01.01.1, thereby creating a significant error in the application of the Piedmont Design Guidelines.

Design Guideline for the Neighborhood and Contiguous Parcel Compatibility of Accessory Dwelling Units 5.03.01.1 states “The siting of a new attached or detached accessory dwelling unit should be visually integrated with the neighborhood and respect adjacent properties.” And there is a comment for this guideline: “The design and location of a new detached or attached accessory dwelling unit should be sensitive to view, access to sunlight, a feeling of openness and other amenities enjoyed by residences on contiguous parcels. The example at right is set back from side property lines, placing it well within the rear yard landscaping.” In citing this guideline, the Commission was supporting its finding that other neighboring properties did not have buildings located at a similar position at the rear of the lot and that the building was not sensitive to view, access to sunlight and openness. However, staff finds that the proposed structure respected setback requirements, its roof line was lower in elevation than the floor level of the primary residence at 81 Maxwellton Road, and it was directly east of the primary residence at 81 Maxwellton Road. Thus, it had no adverse impact on views and it had no impact on access to sunlight. In addition, the removal of two mature oak trees would increase the feeling of openness. Also, the new residences constructed on the properties to the rear, 3 and 5 Maxwellton Road, were constructed at a similar distance from the rear property lines of those lots. Accordingly, the Commission’s finding reflects an error in the application of the Design Guidelines.

Finding for denial #5

The project is not consistent with General Plan policies and programs, including the land use element, housing element, and design and preservation element, including: Natural Resources and Sustainability Policy 14.4 (Retention of Healthy Native Trees), Design and Preservation Element Policy 28.1 (Scale, Height, and Bulk Compatibility), Lane Use Element Policy 1.2 (Neighborhood Conservation).

## Staff Analysis:

General Plan Natural Resources and Sustainability Element Policy 14.4 (Retention of Healthy Native Trees) states, “Encourage the retention of healthy native trees as new construction takes place, including home additions and landscaping projects. Existing significant trees should be conserved where feasible when development takes place.” The application proposes to remove two native oak trees, one with 12 inch diameter and the other with 16 inch diameter, in order to construct the new accessory structure. The City does not have a tree protection ordinance and staff and the Planning Commission normally address the removal of trees by placing a condition on a project approval requiring the planting of replacement (in-lieu) trees. In addition, the applicants submitted a revised site plan and landscape plan (Plan Set Sheet A1.0) on August 9 that proposed the planting of six new California Buckeye trees, also a California native, thus demonstrating compliance with this General Plan Policy.

General Plan Design and Preservation Element Policy 28.1 (Scale, Height, and Bulk Compatibility) states, “Strengthen the defining qualities of Piedmont neighborhoods by relating the scale of new construction, additions, and alterations to existing homes and neighborhood context. Overpowering contrasts in scale and height on adjacent lots should be avoided.” In addition, General Plan Lane Use Element Policy 1.2 (Neighborhood Conservation) states, “Sustain the balance between homes, private yards, and public space that defines Piedmont’s residential neighborhoods. The essential form of the city’s residential areas – including the scale and appearance of its homes, the mature vegetation, the views and vistas, the appearance of streets and public places, and the street layout – should be maintained for the long term future.” These policies were cited by the Commission to support its finding that the bulk, placement on the lot, and impact on the terrain of the proposed accessory structure are not consistent with the neighborhood development. As noted above in the comments on Finding for Denial #1, staff finds that the project is consistent with neighborhood development.

As the analysis above demonstrates, it does not appear that the Planning Commission’s decision to deny the application for a new accessory structure is supported by the weight of evidence, and it includes misapplication of requirements of Chapter 17 and the Design Guidelines. Staff agrees with Planning Commissioners Alessio and Strout that the project meets the standards for approval and recommends that the City Council overturn the Commission’s decision to deny the application and approve it by adopting the findings and conditions of approval provided in a resolution attached to this report as Exhibit G, pages 61-67. The resolution lists 50 design guidelines and 12 General Plan policies with which the proposed project is consistent.



**(2) Addressing Appellant’s position that “The Planning Commission’s rejection of our ADU proposal would violate state law”**

Under Government Code section 65852.2, the City may adopt an ordinance that imposes “standards on accessory dwelling units that include, but are not limited to, parking, height, setback, **lot coverage**, landscape, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Places.” The City’s ordinance may also “provide that accessory dwelling units do not exceed the **allowable density** for the lot upon which the accessory dwelling unit is located, and that accessory dwelling units are a residential use that is consistent with the existing general plan and zoning designation for the lot.” State law requires that projects meeting the standards above be subject only to “an approval process that includes only ministerial provisions for the approval of accessory dwelling units” without any discretionary processes. The City’s ordinance provides for ministerial approval of ADU permits and for design review permits where the project meets certain qualifications.

In this instance, the project as proposed did not meet the City’s floor area ratio requirements for every buildable lot (see for example 17.20.040 imposing floor area maximums for Zone A). The City may lawfully apply floor area ratio requirements with respect to ADUs as state law specifically authorizes the City regulate allowable density and lot coverage. However, rather than requiring that all ADU projects that do not meet floor area ratio requirements be summarily denied, City Code section 17.38.070.B instead authorizes an applicant to seek approval of a floor area exemption from the Planning Commission for certain projects, which may be obtained as part of a separate application for a variance or exception or acted on in conjunction with approving a design review permit. Thus, it is unlikely that the City’s ordinance violates state law as applied here, where a hearing before a discretionary body is necessary because the applicant desires to obtain an exception to otherwise applicable lot coverage and density requirements that the City may lawfully apply. Notably, as the denial of the application is without prejudice, the applicant could still obtain ministerial approval of the accessory structure for ADU by submitting a revised application meeting requirements for ministerial approval by the Planning Director under City Code section 17.66.040.

The appellant also raises purported violations of the Housing Accountability Act as a result of the denial of the Design Review Application to construct a new accessory structure. However, the Housing Accountability Act does not apply to accessory structures or to ADUs. Notably, SB-592 was introduced in the recent 2019 legislative session to add ADUs within the ambit of the Housing Accountability Act, but this legislation was not passed by the legislature.

**C. Conclusion**

Based on the evidence provided in section B(1) above, the appellant has met the burden of demonstrating that the Planning Commission’s action to deny the application for Design Review Permit is not supported by the weight of evidence, and contains errors in applications of Chapter 17 requirements and the City’s Design Guidelines. Staff recommends that the City Council adopt the resolution to approve the project, subject to 24 conditions of approval, provided as Exhibit G to this report, and overturn the Planning Commission decision.

CALIFORNIA ENVIRONMENTAL QUALITY ACT:

Potential environmental impacts related to the project have been reviewed by staff pursuant to the California Environmental Quality Act (CEQA). Section 15303 (a) of the CEQA guidelines provides for a categorical exemption for the construction of a single-family residence in a residential zone. The findings in support of this determination are as follows:

- (a) there is no cumulative impact because the application proposes an accessory structure on a lot in a residential zone, which will be used for an accessory dwelling unit, the project retains a majority of the existing mature native trees, and there is no reasonable probability of a significant effect on the environment due to any unusual circumstances, as no unusual circumstances have been identified;
- (b) the current application proposes a structure that is stepped with the slope of the lot, minimizing the amount of grading and 242 cubic yards net of off-haul;
- (c) submitted geotechnical evidence indicates that the proposed lot has a rock base and no geotechnical issues have been identified;
- (d) based upon the submittals from the applicant’s geotechnical expert, the possibility of a landslide or subsidence on the project lot is unlikely; and
- (e) there is no substantial evidence that any exception to the Class 3 Categorical Exemption applies to this project, specifically including the unusual circumstances exception.

CITY COUNCIL ACTION REQUIRED:

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

EXHIBITS:

<u>Exhibit</u>	<u>Pages</u>	<u>Document</u>
A	13-16	Meeting Minutes, Planning Commission, August 12, 2019 (Abridged)
B	17-29	Meeting Minutes, Planning Commission, December 10, 2018 (Abridged)
C	31-34	Appellant’s Letter and Statement, August 21, 2019
D	35-39	Application Materials
E	41-53	Staff Report to Planning Commission, August 12, 2019
F	55-60	Public Comments submitted prior to the Planning Commission meeting
G	61-67	Resolution to approve Design Review Permit application #19-0195

Separate

Exhibit H	Proposed Plan Set for Application #19-0195
Exhibit I	Proposed Plan Sheet A1.0 submitted August 9, 2019, for Application #19-0195

Related Documents

City Code Chapter 17, Planning and Land Use

[http://piedmont.ca.gov/UserFiles/Servers/Server\\_13659739/File/Government/City%20Charter%20&%20Code/Chapter%2017.pdf](http://piedmont.ca.gov/UserFiles/Servers/Server_13659739/File/Government/City%20Charter%20&%20Code/Chapter%2017.pdf)

City of Piedmont General Plan

[http://piedmont.ca.gov/services\\_departments/planning\\_building/general\\_plan\\_other\\_policy\\_documents](http://piedmont.ca.gov/services_departments/planning_building/general_plan_other_policy_documents)

City of Piedmont Design Guidelines

[http://piedmont.ca.gov/services\\_departments/planning\\_building/about\\_planning\\_design\\_review\\_design\\_guidelines](http://piedmont.ca.gov/services_departments/planning_building/about_planning_design_review_design_guidelines)

By: Kevin Jackson, Planning & Building Director

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## PIEDMONT PLANNING COMMISSION

Regular Meeting Minutes for Monday, August 12, 2019 (ABRIDGED)

A Regular Session of the Piedmont Planning Commission was held August 12, 2019, 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 July 29, 2019.

- CALL TO ORDER** Chairman Levine called the meeting to order at 5:00 p.m.
- ROLL CALL**
- Present: Commissioners Allison Alessio, Yildiz Duransoy, Jonathan Levine, Tom Ramsey, Alternate Commissioner Doug Strout
- Absent: Commissioner Rani Batra
- Staff: Planning & Building Director Kevin Jackson, Senior Planner Pierce Macdonald-Powell, Assistant Planner Mira Hahn
- ANNOUNCEMENTS** Director Jackson reported Associate Planner Christopher Yeager has resigned his position with the City. Dana Peak will fill the vacant position beginning August 26.
- PUBLIC FORUM** There were no speakers for the public forum.
- REGULAR SESSION** The Commission considered the following items of regular business:
- REGULAR CALENDAR** The Commission considered the following items as part of the Regular Calendar:
- Design Review Permit  
89 Maxwelton Road** The Property Owners are requesting permission to construct a 798-square-foot single-story accessory structure and associated site changes pursuant to Section 17.38.070.B of the Piedmont City Code.
- Written notice was provided to neighbors. **No affirmative response forms and four negative response forms** were received.
- Public testimony** was received from:
- Leila Mashhoodi, project architect, reported the architectural style of the accessory structure matches the style of the main residence as do the materials, paint color, windows, and light fixtures. Hedges will be planted along the west and south property lines and six native buckeye trees along the south property line to provide privacy. Two trees will be removed from the lot. The height of the accessory structure, 17 feet 8 inches, has been kept as low as possible. The building will not be visible from the street but will have steps for access from Maxwelton Road. The project complies with requirements and does not need a variance. The hedges will be 8 feet tall when planted, but they could be replaced with a fence. The accessory structure was originally proposed as a part of the house and increased the bulk and height of the house. Separating the accessory structure from the house is a different approach that reduces the height and mass of the main house.
- Senior Planner Macdonald-Powell noted the handrail along the walkway to the accessory structure is open. The floor area calculation of the house approved in December 2018 included space located beneath the driveway bridge because

space with a ceiling height of 7 feet or more and 42 inches or more of exposed wall area is included in the calculation of floor area. The total floor area of the main house, the space beneath the driveway bridge, and the accessory structure would exceed the maximum allowable floor area ratio (FAR) if the exemption for accessory dwelling units of 800 square feet or less or 10 percent of the lot size is not applied.

Keven Kwok, Property Owner, advised that he has discussed the project with neighbors on both sides of the property, and the project accommodates their feedback as much as possible. The project has been redesigned to reduce the height and mass and to change the roofline and pitch. The highest point of the roof will be slightly lower than the floor level of 81 Maxwellton Road. An 8-foot-tall hedge along the side of the property will screen 81 Maxwellton Road from view. A fence, a different type of tree, or planting vegetation on the neighbor's property are options for screening. The accessory structure will be integrated visually with the main house. Mr. Kwok related that he has notified neighbors that the accessory structure would not be a component of the project approved in December, and the neighbors supported that project. The square footage of the main home and accessory structure will be more than 4,500 square feet, but the massing of the main house has been reduced by relocating the accessory structure. The accessory structure's roof will be visible to neighbors.

Joyce Tang, Property Owner, related that the accessory structure will provide flexibility for childcare and economic stability. The site has four off-street parking spaces, and a parking space for the accessory structure is not required.

Philip Stein, neighbor at 16 Nellie Avenue, opposed the application. The current application seeks to bypass a prior proposal, which the Planning Commission denied, by enlarging the original accessory structure and constructing it as a separate structure. Allowing multifamily occupancy will significantly alter and fundamentally change the character of the neighborhood. Mr. Stein expressed disappointment with the Property Owner's lack of candor and transparency regarding the multiple applications. The application is a proxy for building two separate, fully contained residences at 89 Maxwellton Road. The project should have been presented to the Planning Commission and the neighborhood as two residences because of the precedence it would set.

Director Jackson clarified that the applicant submitted two applications: an application for a design review permit for the accessory structure which is being considered by the Planning Commission, and an application for an Accessory Dwelling Unit Permit. The State prohibits the City from considering ADU permits if the applications meet all Code criteria, and the ADU application submitted by the applicant meets all Code criteria. Therefore, the application for an ADU permit is not before the Planning Commission for consideration.

Jean Stein, neighbor at 16 Nellie Avenue, expressed concern about safety. Maxwellton Road is narrow, winding, and steep. There are no sidewalks along Maxwellton Road, and walking to public transportation is unsafe. Two households with the potential for four drivers will introduce new hazards.

Jack Preston, neighbor at 102 Maxwellton Road, shared the origin of the parking area located in front of his home on Maxwellton Road. Visitors, delivery people, and repairmen utilize the parking area when they are in the neighborhood. He and his family hear the comings and goings of people parking in that area. If the

project is approved, the parking area could be in constant use, and the cars will block his views, mailbox, and walkway. Nothing in the plans will improve the neighborhood.

Virginia Preston, neighbor at 102 Maxwellton Road, appreciated new property owners building or remodeling homes in the neighborhood. In those instances, the impacts of construction have remained within the confines of property lines and have not affected the neighbors. No other lot in the vicinity contains more than one residence. Approving this application could encourage others to build similar structures in an area where they are not logical.

Commissioners Alessio and Strout could make the findings to approve the application, stating the project complies with requirements, the accessory structure's style and form complement and are consistent with the main house, the accessory structure has a low profile, and the accessory structure will not impact significantly the adjacent neighbor.

Commissioners Duransoy and Ramsey and Chairman Levine could not support approval of the application because the accessory structure will have a materially negative impact on the privacy of the neighbor at 81 Maxwellton Road; removing the mature trees will have adverse effects on nature; the project returns mass that was previously removed from the site in response to the Planning Commission's concerns and increases the structural coverage of the lot; the project conflicts with Design Guidelines 3.11.03.1 and 5.03.01, Design and Preservation Element Policy 28.1, and the December 2018 presentation to the Planning Commission; and the project will increase the amount of soil excavated from the site when the amount of excavation was a factor in the Planning Commission's rejection of two earlier proposals for the site.

**Resolution 195-DR-19**

WHEREAS, the Property Owner is requesting permission to construct a 798-square-foot, single-story accessory structure and associated site changes pursuant to Section 17.38.070.B, located at 89 Maxwellton Road, which construction requires a design review permit; and,

WHEREAS, after reviewing the application, plans, and any and all testimony and documentation submitted in connection with such application, and after having visited the subject property, the Piedmont Planning Commission finds that the project is not consistent with General Plan policies and programs, and that the proposal does not conform to the criteria and standards of Section 17.66.060 of the Piedmont City Code:

1. The proposed design is not consistent with the City's General Plan and Piedmont Design Guidelines in that the following building features are not consistent with the original architecture and neighborhood development, including bulk, and this application's proposal to increase the development area of the previously approved application does not minimize impacts on the existing terrain.
2. The design has an effect on neighboring properties' existing views, privacy, and access to direct and indirect light because the proposed new development is located within the view from 81 Maxwellton Road and does not preserve privacy for the neighbor at 81 Maxwellton Road.

3. The proposed design adversely affects pedestrian safety because access to the site is via a railroad-tie walkway to stairs that descend four stories along the property line.

4. The application does not comply with the following Design Review Guidelines and General Plan policies and programs: 3.11.03.1 (Site Design) and 5.03.01.1 (Building Design: Single-Family Residential).

5. The project is not consistent with General Plan policies and programs, including the land use element, housing element, and design and preservation element, including: Natural Resources and Sustainability Policy 14.4 (Retention of Healthy Native Trees), Design and Preservation Elevation Policy 28.1 (Scale, Height, and Bulk Compatibility), Lane Use Element Policy 1.2 (Neighborhood Conservation).

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission denies the design review permit application for construction at 89 Maxwellton Road, Piedmont, California, in accordance with the plans and specifications on file with the City.

Moved by Ramsey, Seconded by Duransoy

Ayes: Duransoy, Levine, Ramsey

Noes: Alessio, Strout

Recused: None

Absent: Batra

#### **ADJOURNMENT**

There being no further business, Chairman Levine adjourned the meeting at 8:55 p.m.



## PIEDMONT PLANNING COMMISSION

Regular Meeting Minutes for Monday, December 10, 2018 (ABRIDGED)

A Regular Session of the Piedmont Planning Commission was held December 10, 2018, 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 26, 2018, and a revised agenda was posted on November 30, 2018.

### CALL TO ORDER

Chairman Behrens called the meeting to order at 5:00 p.m.

### ROLL CALL

Present: Commissioners Allison Alessio, Eric Behrens, Yildiz Duransoy, Jonathan Levine, and Tom Ramsey, Alternate Commissioner Rani Batra

Absent: None

Staff: Planning Director Kevin Jackson, Senior Planner Pierce Macdonald-Powell, Associate Planner Chris Yeager, Assistant Planner Mira Hahn, and Planning Technician Steven Lizzarago

### PUBLIC FORUM

There were no speakers for the public forum.

### REGULAR SESSION

The Commission considered the following items of regular business:

### REGULAR CALENDAR

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

#### **New House Variance and Design Review Permit 89 Maxwellton Road**

The Property Owner is requesting permission to construct a new 3,900-square-foot residence and 487-square-foot, two-car garage, including tree removals and new retaining walls, driveway bridge, patios, site steps, exterior lighting, doors, windows, porches, decks, railings, trash enclosure, landscaping and other changes, on an existing vacant lot. Variances are required to construct a structure within the street yard (north) setback and a patio within the street yard setback.

Written notice was provided to neighbors. **Three affirmative response forms and two negative response forms** were received.

**Public testimony** was received from:

Joyce Tang, Property Owner, reported she has met and communicated with neighbors to discuss the project and revised the project design to address concerns. Adjacent neighbors have agreed to support and not to oppose the project. The project is consistent with the Piedmont Design Guidelines and has little to no effect on neighboring properties' views, privacy, and access to direct and indirect light. As many trees as possible have been maintained on the property. The proposed landscape plan includes fast-growing plants that will preserve neighbors' privacy. The project does not adversely affect pedestrian or vehicular safety. The project maintains the three parking spaces adjacent to the lot and includes two driveway parking spaces and two garage parking spaces. The size and massing of the proposed home has been reduced significantly. The 3,900-square-foot home is smaller than any home built in the neighborhood in the last 20 years and slightly above the average size of the homes built predominantly in the 1960s.

John Newton, project designer, advised that he reduced the height and the massing of the home, revised the home's colors, altered windows facing the

adjacent neighbor, and moved the left side of the house down the hill in response to neighbors' concerns. Internal and external floor heights have been reduced, and a portion of the guest suite has been pushed beneath the driveway.

Keven Kwok, Property Owner, indicated the material for the driveway will be pavers, and the retaining walls will be stucco over concrete.

In general, Commissioners supported the project, referring to a good design, the house following the topography of the lot, the use of minimum window sizes on the sides of the house facing adjacent property, the house's compatibility with the neighborhood, reduced visibility of the house from the street, the applicants responding to neighbors' concerns and complying with guidelines, and the applicants saving the large oak tree.

**Resolution 331-V/DR NH-18**

WHEREAS, the Property Owner is requesting permission to construct a new 3,900-square-foot residence and 487-square-foot, two-car garage, including tree removals and new retaining walls, driveway bridge, patios, site steps, exterior lighting, doors, windows, porches, decks, railings, trash enclosure, landscaping and other changes, on an existing vacant lot at 89 Maxwellton Road, which construction requires a design review permit; and,

WHEREAS, variances from the requirements of Chapter 17 of the Piedmont City Code are necessary to construct a structure and a paved patio within the street yard setback; and,

WHEREAS, after reviewing the application, plans, and any and all testimony and documentation submitted in connection with such application, and after having visited the subject property, the Piedmont Planning Commission finds that the project is categorically exempt under the California Environmental Quality Act, pursuant to CEQA Guidelines Section 15303, Class 3(a), because the project consists of one single-family residence to be constructed within a single-family zoning district, because there are no unusual circumstances associated with the property or the project, because existing General Plan policies and programs are sufficient to address the proposed grading, excavation, and construction, and because there is no substantial evidence that any exception to the Class 3 Categorical Exemption applies to this project, specifically including the unusual circumstances exception, and the project is consistent with General Plan policies and procedures; and,

WHEREAS, the street setback and landscaping variances from the application are approved because they comply with the variance criteria under Section 17.70.040.A as follows:

1. The property and existing improvements present unusual physical circumstances of the property, including the lot has unusually steep topography, the lot has mature and established trees that are significant landscape features, and the lot has an irregular property line resulting in irregular setbacks so that strictly applying the terms of this chapter would prevent the property from being used in the same manner as other conforming properties in the zone.
2. The project is compatible with the immediately surrounding neighborhood and the public welfare because a majority of neighboring properties have garages located close to the street; the majority of neighboring properties require construction in the front setback to access the house due to the topography of the

lot; and paved areas in the street setback not for ingress and egress are located elsewhere in the neighborhood due to the steep topography that limits level areas.

3. Accomplishing the improvement without a variance would cause unreasonable hardship in planning, design, or construction because the house would not be accessible from the street without a driveway structure within the setback, and due to the topography the least impactful area for the outdoor living space is partially located within the front street yard setback. Other locations would require significant structures and could not be accessed.

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

1. The proposed design is consistent with the City's General Plan and Piedmont Design Guidelines in that the following building features are consistent with the original architecture and neighborhood development: the residence will step with the hillside thus reducing the overall massing of the structure; the materials used for the roof, walls, and windows are consistent and appropriate; the neighborhood has a variety of housing styles including contemporary and traditional; the residence is sited away from the street and lower on the hillside and is screened by mature native trees; the majority of residences are also sited lower than the street elevations; and the majority of healthy, native trees are preserved.

2. The design has little or no effect on neighboring properties' existing views, privacy, and access to direct and indirect light because the distance between the project and neighboring homes is appropriate; the topographical differences are appropriate to preserve privacy, views, and light; the height of the project has been kept as low as possible and steps with the topography; and there is sufficient existing and proposed vegetative screening.

3. The proposed design does not adversely affect pedestrian or vehicular safety because the project provides adequate visibility for entering and exiting the driveway; new handrails, paths, and on-grade steps are provided for pedestrian safety; there is sufficient space between the driveway and trash enclosure to provide safe sightlines; the driveway has been kept as narrow as possible to preserve on-street parking; and the application does provide Code-conforming off-street parking.

4. As conditioned, the application complies with the following Design Review Guidelines and General Plan policies and programs: I-1, I-1(a), I-1(b), I-1(c), I-1(d), I-2, I-2(a), I-2(b), I-2(c), I-2(d), I-3, I-4, I-5, I-5(a), I-5(b), I-6, I-7, I-7(a), I-8, I-9, I-9(a), I-10, I-11, I-12 (*new construction*), III-1, III-1(a), III-2, III-2(a), III-3, III-4, III-5, III-5(a), III-6, III-6(a), III-7, III-7(a) (*garages*), IV-1, IV-1(b), IV-2, IV-2(a), IV-3, IV-3(a), (*retaining walls*).

5. The project is consistent with General Plan policies and programs, including the land use element, housing element, and design and preservation element, including: Natural Resources and Sustainability Element Policy 13.4 (Conserving Native Vegetation, Natural Resources and Sustainability Element Policy 14.4 (Retention of Healthy Native Trees), Natural Resources and Sustainability Element Policy 16.5 (Hardscape Surface Standards), Design and Preservation Policy 27.3 (View Preservation), Design and Preservation Element

Policy 28.1 (Scale, Height, and Bulk Compatibility), Design and Preservation Element Policy 28.2 (Style Compatibility), Design and Preservation Element Policy 28.5 (Garages, Decks, and Porches), Design and Preservation Element Policy 28.6 (Exterior Materials), Design and Preservation Element Policy 28.7 (Hillside Home Design), Design and Preservation Element Policy 29.5 (Fence and Wall Design), Design and Preservation Element Policy 29.6 (Retaining Walls), Design and Preservation Element Policy 29.7 (Driveway and Parking Location), Land Use Element Policy 1.2 (Neighborhood Conservation), Land Use Element Policy 1.3 (Harmonious Development), Housing Element Policy 6.2 (Energy-Efficient Materials), Housing Element Policy 6.7 (Water Conservation), Environmental Hazards Goal 18 (Geologic Hazards), Environmental Hazards Policy 18.4 (Soil and Geologic Reports),.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the variance application and the design review permit application for the construction at 89 Maxwellton Road, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

1. **Licensed Design Professional Required. Licensed Design Professional Required.** In conformance with the Architects Practice Act, Business and Professions Code section 5500 et seq., all plans, specifications, and other instruments of service submitted for review and approval of a building permit for the proposed construction project, must be prepared by or under the responsible control of, and stamped and signed by, a properly licensed design professional.
2. **Window and Door Material.** As specified in the plans, the building material for the new windows and doors shall be fiberglass, except for the wood front door and wood or aluminum garage door.
3. **Window Color Scheme.** All the windows on the house shall have a consistent color scheme.
4. **Window Recess.** All new windows shall be recessed 2 inches from the exterior wall to the face of window sash in order to maintain consistency, as required by the City's Design Guidelines and Window Replacement Policy. Window details shall be submitted for review and approval at the time of building permit application.
5. **Pre-construction Inspection.** Prior to the commencement of window fabrication, the installer shall schedule a pre-construction inspection with the Building Department to review the approved installation criteria, such as the window recess, window trim if any, and window sill projection if any.
6. **Roof Color.** The proposed flat roof shall be a non-reflective medium or dark color to minimize the visual impact on upslope properties.
7. **Skylight Flashing.** The metal flashing around the new skylight(s) shall be painted to match the adjacent roof color.
8. **Exterior Lighting.** All new exterior light fixtures shall be downward directed with an opaque or translucent shade that completely covers the light bulb.

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

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

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

12. **C&D Compliance.** Compliance with Section 9.04 of the Municipal Code, which governs the recycling of construction and demolition debris, is required for all phases of this project.

13. **Defense of Legal Challenges.** If there is a third party administrative, legal or equitable action challenging the project approvals, including CEQA issues, the Property Owner shall defend and indemnify the City against any liability, fees and costs arising out of the defense, including the costs of City's own counsel. If such an action is filed, the Property Owner and City shall then enter into an agreement regarding selection of counsel and other provisions related to the defense. For this purpose, "City" includes the City and its elected and appointed officials, agents, officers and employees.

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

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

16. **New Private Sewer Lateral.** With the submittal of the improvement and building plans for the proposed project, the plans shall show the proposed route to provide the private sanitary sewer service for the residence as required by the Director of Public Works and the City Engineer. The proposed private sewer lateral shall be the sole responsibility of the property owner to construct and maintain said private sewer lateral up to its connection point with the public sewer main in the area. Connection fittings to the public sanitary sewer system shall only be executed by the City of Piedmont. Said private sanitary sewer lateral design and installation shall meet all current City of Piedmont regulations, and shall be reviewed and approved by the Director of Public Works and the City Engineer prior to issuance of a separate Sewer Permit. If required, the property owner shall secure necessary sewer easement(s) from adjacent private properties to allow for the construction and ongoing maintenance of the private sewer lateral on adjacent private properties. Said sewer easements shall be prepared with a grant deed, legal description and plat depicting the location of the easement and shall be submitted to the City for review and approval at the time the plans are submitted. Once approved by the City, the easement shall be recorded. Recordation of the easement shall be required prior to the approval of the improvement/building plans for this residence. Private sewer lateral in the public right-of-way may require an Encroachment Permit, as required by the Director of Public Works and the City Engineer.

17. **Stormwater Design.** The California Regional Water Quality Control Board requires all projects, or a combination of related projects, that create and/or replace 2,500 square feet or more of impervious surface to comply with Provision C.3.i of the Municipal Regional Stormwater NPDES Permit. As required by the Building Official, the Property Owner shall verify the total area of impervious surface to be created and/or replaced within the scope of this project, or this project combined with other related projects and/or permits, and incorporate the site design measure(s) required under Provision C.3.i into the plans submitted for a building permit. Copies of the Municipal Regional Stormwater Permit are available from the Piedmont Public Works Department and on-line at [cleanwaterprogram.org](http://cleanwaterprogram.org).

18. **Encroachment Permit.** Before the issuance of a building permit, the Property Owner shall apply for an encroachment permit to allow for the construction within the public right-of-way or public easement, including the driveway bridge, trash enclosure, private sewer lateral, and others, as required by the Public Works Director and the City Engineer.

19. **Arborist's Report and Certified Tree Preservation Plan.** Before the issuance of a building permit, the Property Owner shall submit an Arborist's Report and Certified Tree Preservation Plan that includes tree preservation measures to preserve the native trees with 12-inch diameter (dbh) or greater on the property, as well as any nearby off-site trees near the property lines. The tree preservation measures shall be on the appropriate sheets of the construction plans. The arborist shall be on-site during critical construction activities, including initial and final grading, to ensure the protection of the existing trees that are intended to be retained. The arborist shall document in writing and with photographs the tree protection measures used during these critical construction phases. If some trees have been compromised, mitigation measures must be specified in writing, and implementation certified by the Project Arborist. Trees proposed for removal shall have an in-lieu replacement tree planted elsewhere on the property, which shall be shown on the final landscape plan. Replacement

tree size is subject to staff review, and shall be commensurate with the size and numbers of trees to be removed. They shall generally be a minimum of 24" box size. Before the Final Inspection, the Arborist shall file a report to the City certifying that all tree preservation measures as recommended have been implemented to his/her satisfaction and that all retained trees have not been compromised by the construction.

20. **Final Landscape Plan.** Before issuance of a building permit, the Property Owner shall submit for staff review and approval a Final Landscape Plan that shows trees proposed for retention as well as in-lieu trees. The final plan shall comply with City Code Division 17.34 and Section 17.33.30, and shall not propose plants near the driveway that could obscure visibility of pedestrians on the sidewalk or vehicles on the street from drivers backing out of the driveway. Upon the determination of the Director, minor differences in the number, size and/or species of vegetation between those shown on the approved landscape plan and those installed at the time of final inspection that do not involve an increase in hardscape or structure coverage may be subject to staff review and approval. Significant differences between the vegetation installed at the time of final inspection and vegetation shown on the approved landscape plan are subject to a design review permit.

21. **Foundation/Shoring/Excavation Plan.** The Property Owner shall submit foundation, excavation, and shoring plans prepared by a licensed civil or structural engineer that fully address issues of site shoring, fencing and hillside security issues. The plans shall not require any trespassing or intruding into neighboring properties (without prior written consent), and shall mitigate against any subsidence or other damage to neighboring properties. Such plans shall incorporate as appropriate the recommendations of the Property Owner's geotechnical engineer and the City's geotechnical consultant, and shall be subject to approval by the City Engineer and the Chief Building Official.

22. **Blasting.** No blasting shall be allowed for any rock removal on this project.

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

24. **California's Water Efficient Landscape Ordinance:** Property Owner shall comply with the requirements of California's Model Water Efficient Landscape Ordinance that went into effect January 1, 2010, by submitting the following required information to the Building Department:

- a. Landscape Documentation Package that includes the following 6 items: (i) Project Information; (ii) Water Efficient Landscape Worksheet; (iii) Soil Management Report; (iv) Landscape Design Plan; (v) Irrigation Design Plan; and (vi) Grading Design Plan. The Landscape Documentation Package is subject to staff review and approval before the issuance of a building permit.
- b. Once a building permit has been issued, the Property Owner shall submit a copy of the Water Efficient Landscape Worksheet, to the local water purveyor, East Bay Municipal Utility District.
- c. After completion of work, the Property Owner shall submit to the City and East Bay Municipal Utility District a Certificate of Completion, including an irrigation schedule, an irrigation maintenance schedule, and an irrigation audit report. The City may approve or deny the Certificate of Completion. (The form for the Landscape Document Package and a Frequently Asked

Question document on the CA-WELO requirements is available at the Public Works Counter and on the City website at [www.ci.piedmont.ca.us](http://www.ci.piedmont.ca.us)).

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

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

**26. Sound and Vibration Mitigation Plan and Review.** As required by the Director of Public Works, the Property Owner shall submit a plan prepared by a licensed engineer of the Property Owner's choice that fully assesses the existing site conditions for the mitigation and monitoring of vibration and decibel levels at the Project during construction (including being periodically present at the construction site during excavation and foundation work). If, in the Engineer's sole discretion, such monitoring indicates that the sound or vibration levels exceed those anticipated in the Property Owner's Construction Management Plan and/or the Sound and Vibration Mitigation Plan, all work on the Project may be immediately stopped by the City and may not resume until the City Engineer is fully assured that the sound and vibration transmissions generated by work on the Project can be maintained at or below a reasonable level and duration.

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

**27. City Facilities Security.** The Property Owner shall provide a specific cash deposit, letter of credit, bank guarantee, or other similar financial vehicle ("City Facilities Security") in the amount of \$100,000 as established by the Director of Public Works. This financial vehicle serves as an initial sum to cover the cost of any potential damage to City property or facilities in any way caused by Property Owner, Property Owner's contractors or subcontractors, or any of their agents, employees or assigns, and related in any way to the Project. The



Property Owner is responsible for the full cost of repair as determined by the City Engineer prior to final inspections. The form and terms of such City Facilities Security shall be determined by the Director of Public Works after consultation with the Property Owner. The Director may take into account any of the following factors: the cost of construction; past experience and costs; the amount of excavation; the number of truck trips; the physical size of the proposed project; the logistics of construction; the geotechnical circumstances at the site; and City right-of-way and repaving costs.

- a. To provide clear baseline information to assist in determining whether damage to the City's facilities has been caused by the Property Owner or others working for or on behalf of Property Owner, the City will document such facilities (including, without limitation, streets and facilities along the approved construction route as specified in the Construction Management Plan, to establish the baseline condition of the streets and facilities. The City shall further re-document the streets as deemed appropriate after the Project commences until the Director of Public Works determines that further documentation is no longer warranted. As part of the documentation, the City may water down the streets to better emphasize any cracks or damage in the surface. The Property Owner is responsible for the full cost of the documentation and repair work as determined by the City Engineer, and shall reimburse the City for those costs prior to the scheduling of final inspection.
- b. When the City Facilities Security is in a form other than cash deposit with the City, the proceeds from the City Facilities Security shall be made payable to the City upon demand, conditioned solely on the Director of Public Works' certification on information and belief that all or any specified part of the proceeds are due to the City.

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

29. **City Attorney Cost Recovery.** If there is a substantial additional commitment of City Attorney's time required to accommodate the scope and nature of the Project, the Property Owner shall, at the time of the Building Permit Application, make a cash deposit with the City in the amount of \$5,000 to be used to offset time and expenses of the City Attorney relating to the Project. If such cash deposit has been reduced to \$2,500.00 or less at any time, the Director of Public Works may require the Property Owner to deposit additional funds to cover any further estimated additional City Attorney time and expenses. Any unused amounts shall be refunded to the Property Owner within 90 days after the Project has an approved Final Inspection by the Chief Building Official.

30. **Site Safety Security.** The City and the public have an interest in not having an unfinished project blighting the neighborhood and undermining property values. These public interests are primarily safety and aesthetics, and diminishment of property values. Prior to the issuance of a Building Permit, the Property Owner shall provide a specific cash deposit, letter of credit, bank guarantee, or other similar financial vehicle (“Site Safety Security”) in the amount of \$50,000 to ensure that the Project site is not left in a dangerous or unfinished state.

- a. The Site Safety Security shall be in an amount to include three components:
  - i. safety, which means the cost to make the site and structure safe if construction should cease mid-way through the Project;
  - ii. aesthetics, which means an amount to install and maintain landscaping all around the Project to protect the immediate local views from neighbors and public property; and
  - iii. staff and consultant time to evaluate and implement this condition.If, as the Project proceeds, the expected cost of these components increases beyond the original estimate in the opinion of the Director of Public Works, the City may require the Property Owner to increase the amount of the Site Safety Security by the additional amount. The Property Owner shall provide City with written evidence of compliance within 15 working days after receiving written notice of the additional required amount. The City shall retain, at the Property Owner’s expense, an independent estimator to verify the total expected costs to complete the Project and any subsequent revisions.
- b. The form and amount of the Site Safety Security is subject to the approval of the Director of Public Works. Payment to City under the Site Safety Security shall be made payable upon demand by the City and prior to the issuance of the Building Permit, conditioned solely on the Director of Public Works’ certification on information and belief that all or any specified part of such Performance Security is due to the City.
- c. The Site Safety Security shall not be released until the Project has an approved Final Inspection by the Chief Building Official. However, if sufficient work has been completed according to the benchmarks and construction values as established under the Construction Completion Schedule, the Site Safety Security may be reduced to the extent the Director of Public Works in his sole discretion determines is appropriate.

31. **Subsidence.** The Property Owner acknowledges and agrees that all work on the Project may be immediately stopped by the City in the event of any unanticipated landslides, subsidence, creep, erosion or other geologic instability, and may not resume until the City Engineer is fully assured that no further subsidence or erosion will occur. If in the opinion of the City Engineer, the instability poses a danger to public or private property, and Property Owner is not responding in a diligent manner, the Director of Public Works may use proceeds from the Site Safety Security required above to address the instability.

32. **Errors and Omissions Insurance.** Notwithstanding any other condition hereof, any Project Architect, Structural Engineer, Civil Engineer, Geotechnical Engineer or Shoring Engineer to be retained by the Applicant to perform work relating to project on Applicant’s property shall be required to maintain errors and omissions insurance coverage with limits of no less than \$1,000,000.00 per claim that will specifically be available to cover any errors and/or omissions relating to any work performed by that professional involving Applicant’s property.

33. **Neighboring Property Inspection.** Should the neighboring property owner provide consent, a licensed civil or structural engineer (chosen by the City, and paid for by the Property Owner) shall inspect neighboring homes at 81 Maxwellton Road and 61 Maxwellton Road and retaining walls with the intent of establishing base-line information to later be used in determining whether damage was caused by any activities on Property Owner's property (including damage caused by vibrations or other factors due to excavation, construction or related activities). The inspection shall include both foundations and non-foundation related details (walls, windows, general overall condition, etc.) at a level of inspection City Staff deems appropriate. The inspection shall only include readily visible and accessible areas of the neighboring homes. The licensed civil or structural engineer shall provide a full report to the City of his or her conclusions, and the report may be considered in developing the Construction Management Plan. If other independent consultants or specialists are required by the City to review plans and monitor construction activity, they shall be retained at the Property Owner's cost. Before a neighbor agrees to an inspection, City will advise neighbors that the property inspection is necessarily a public record under the California Public Records Act.

Within 45 days after the Certificate of Occupancy is issued on Property Owner's property, the same licensed civil or structural engineer chosen by the City (or a substitute licensed civil or structural engineer chosen by the City) shall inspect the same area in each neighboring home and property initially inspected, and shall present to the City a Report detailing any evidence of apparent damage that has been or reasonably might have been caused by activities on the Property Owner's property. The Report may include text, photographs, diagrams, or other evidence that would document the apparent damage. The Report will become a public record and may be used in connection with private causes of action.

34. **Construction Management Plan.** The Property Owner shall develop a comprehensive Construction Management Plan. The Construction Management Plan shall address noise, vibrations, traffic control, parking, debris removal, dust control, sanitary facilities, site safety security, emergency access, and other potential construction impacts, as well as other details involving the means and methods of completing the Project, including the construction route. The City Building Official has the authority to require modifications and amendments to the Construction Management Plan as deemed necessary throughout the course of the Project and until the Final Inspection.

a. **Construction Site Control of Stormwater.** The California Regional Water Quality Control Board requires all projects that disturb the site to comply with Provision C.6 of the San Francisco Bay Regional Stormwater NPDES Permit in order to prevent construction site discharges of pollutants and other regulated materials during construction. As required by the Chief Building Official and prior to the issuance of a building permit, the Applicant shall develop and submit a construction stormwater management plan as part of the Construction Management Plan to achieve timely and effective compliance with Provision C.6. Permit Provision C.6.c.ii provides sources for site specific, and seasonally- and phase-appropriate, effective Best Management Practices (BMPs) that may be incorporated into the stormwater management plan. Copies of the Municipal Regional Stormwater Permit are available from the Piedmont Public Works Department and on-line at [cleanwaterprogram.org](http://cleanwaterprogram.org).

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

shall submit for approval a Construction Completion Schedule, which will specify, in detail, the duration and percentage of the project as a whole for each phase.

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

**36. Building Permit.** Prior to issuance of a building permit, the applicant shall make the following revisions to the plans as required by the Building Official to meet Building Code and Fire Code requirements:

- a. Windows shall be identified as tempered glass, including but not limited to windows D, R, and Q.
- b. Windows shall meet egress requirements including but not limited to windows E, T, V and one window in the master bedroom.

- c. Stairs with four or more risers must have handrails both interior and exterior.
- d. Guardrails must be dimensioned 42 inches above finish floor on elevations.
- e. Plumbing vent pipes through the roof must have a minimum distance of 10 feet horizontally and 3 feet vertically from all operable skylights.
- f. Decks must meet Piedmont Fire Code requirements.
- g. Provide grid lines for building permit submittal.
- h. The plans shall show installation of an automatic fire sprinkler system.

Moved by Ramsey, Seconded by Alessio

Ayes: Alessio, Behrens, Duransoy, Levine, Ramsey

Noes: None

Recused: None

Absent: None

#### **ADJOURNMENT**

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

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CITY OF PIEDMONT  
120 VISTA AVENUE  
PIEDMONT, CA 94611  
TEL: (510) 420-3050  
FAX: (510) 658-3167

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CITY CLERK  
CITY OF PIEDMONT

APPEAL FORM

Pursuant to City Code Division 17.78

GENERAL INFORMATION

**Who:** Any interested person may appeal a decision of the Director to the Planning Commission, or a decision of the Planning Commission to the City Council.

**When:** A written appeal, stating the grounds for appeal, must be filed within ten calendar days after the date of the decision.

**Where:** Appeals must be submitted to the City Clerk at the address at the top of this form.

**Cost:** \$730

**Process:** Appeals of Director (Planning Staff) decisions will be considered by the Planning Commission. Appeals of Planning Commission decisions will be considered by the City Council. The appeal body will hear the appeal as soon as is reasonably possible, taking into account the notice requirements.

**Grounds for overruling decision:** The appeal body may overrule the action of the decision maker only if one of the following occurs:

- a. The findings made by the decision maker as a basis for its action are not supported by the weight of evidence;
- b. There is a significant error in the application of the requirements of Chapter 17 or other requirements of the City Code;
- c. There is a significant error in the application of the Piedmont Design Guidelines; or
- d. Significant errors in the application, plans, drawings or other materials provided to the decision maker are discovered after the hearing, which were a basis of the decision.

If you have any questions regarding the appeal procedure, please call the City Clerk at (510) 420-3040 or the Planning Division at (510) 420-3050.

I wish to appeal the decision of the:  Planning Director; or  Planning Commission, which took action on

8/12/2019 in the matter of 19-0195 at 89 Maxwellton Rd.  
(Date of decision) (application #) (project address)

Signature: Joyce Tang Name: Joyce Tang  
(please print)

I am the  applicant,  concerned,  other. Phone number 925.389.1088 Email joycemtang@gmail.com

Mailing Address 6733 Gunn Drive  
Oakland, CA 94611

The grounds upon which this appeal is filed are: (List all grounds relied upon in making this appeal. See City Code Section 17.78.040. Please attach additional sheets if more space is needed.)

17.78.040 A. 2. a

17.78.040 A. 2. b

17.78.040 A. 2. c

see attached letter

(For staff use only)

APPEALED APPLICATION # 19-0195

PLANNER PMP

\$730 FEE PAID

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AUG 21 2019

CITY CLERK  
CITY OF PIEDMONT

August 21, 2019

Dear Piedmont City Council,

We respectfully appeal the Piedmont Planning Commission's decision to reject our application for an accessory dwelling unit at 89 Maxwellton on August 12, 2019, permit application #19-0195. The denial of our permit was unjustified under both the local Piedmont accessory dwelling unit (ADU) regulations, and was in conflict with state ADU standards and the requirements of the Housing Accountability Act.

- I. The ADU proposal complies with all local Piedmont Planning and Land Use Code.

Our proposed accessory dwelling unit complies with all Piedmont Design Standards including the floor area ratio and lot coverage requirements. Per the staff report, this accessory structure would comply with all applicable codes and require no variances. It also achieves design compatibility between the approved home and the accessory unit.

While we disagree with our rejection, we aren't able to provide as meaningful of an appeal with the communications that we were provided. Piedmont City Code Section 17.78.020 states:

Application. A person wishing to file an appeal must submit an application, stating the grounds for appeal, within ten calendar days after the date of the decision. The request must be filed with the City Clerk, and accompanied by the appeal fee.

Without knowing why the Planning Commission denied the permit, it's extremely difficult to actually "state the grounds for appeal" as we don't fully understand the basis for our rejection. We can operate from meeting video, however as meeting minutes aren't approved for another month or two, it's very hard to put together a cogent appeal.

**The Planning Commission stated no reasons in the letter dated on August the 13 for our application denial, thereby violating several code requirements.** By providing no reason for denying the design review permit, the Planning Commission violates the City's intent for the ADU regulations to "clarify the requirements for the various kinds of accessory dwelling units in the City." (See Section 17.38.010.D.)

The staff report provides the design review findings proposed by the applicants and puts forth no evidence that contradicts their conclusions. The Planning Commission denied this application but gave no reasons for its denial, violating Section 17.38.050.C (ADU rules) which states:

Decision and conditions. The reviewing body (either the Director or the Planning Commission) shall render its decision in writing and shall state the reasons for approval or denial. The Planning Commission may impose reasonable conditions of approval.

It is impossible for the citizens of Piedmont to know what Piedmont requires for ADU design if Piedmont decision-making bodies don't state them. Without this knowledge, the City of Piedmont is discouraging construction of ADUs and thus also violating Section 17.38.010.A, B, and D.



The Planning Commission has repeatedly sided with very vocal neighbor opposition to additional housing and adding renters to a neighborhood that is starved for more affordable housing. We have met, on at least a dozen occasions, privately with our neighbors to collect feedback on iterations of our home and accessory dwelling unit designs in attempts to reach the most reasonable outcome for all parties. We've been patiently working with our architect, our landscape designer, Kevin Jackson, Pierce Macdonald and our neighbors over the past 3 years now and have reached an impasse.

We feel we have adequately addressed design review standards (Section 17.66.060):

- **Safety:** Our home comes with four off street parking spots to mitigate impacted neighborhood parking on the block which is well above the average in the area. 89 Maxwellton is also within a .5 mile walk to a transit stop which would not require additional off street parking.
- **Privacy:** We have moved the ADU as far back on our lot as reasonable to decrease the unit's overall height, mass and street presence. It is virtually imperceptible from the street. We also changed the rooflines and orientation to mitigate privacy concerns expressed by our neighbors at 81 Maxwellton. We have also offered to plant more landscaping on both our property and 81 Maxwellton at our expense to screen foot traffic on the stairs.
- **Access to light:** Our ADU is lower than all neighboring structures and public spaces and does not impede anyone's existing views, privacy and access to direct and indirect light.

In our most recent planning commission meeting in August, our approved application for our home in December was frequently cited by Commissioner Ramsey and Commissioner Levine. Our accessory dwelling unit rejection was unfairly biased by this original approval decision in December when this should have no material impact on the design review of the accessory structure. We planned on eventually building this unit one day, however after nearly 3 years of backlog in planning commission meetings and our growing family, we decided that we needed to work on this project sooner given how long it takes to get anything done. Again, we are in a design review for this accessory unit and as such, these arguments do not hold.

The size and massing of our home and ADU will be the smallest of all the homes built in this neighborhood in the last 20 years. Please see 3 Maxwellton Road, 5 Maxwellton Road and 4 Abbott Way for reference. Our home is designed with a contemporary craftsman design which the accessory dwelling unit also matches and is in line with the neighborhood which has an eclectic array of home sizes and styles.

II. The Planning Commission's rejection of our ADU proposal would violate state law.

State ADU law requires that all local ADU permits must be considered and approved through a purely ministerial, non-discretionary process (Gov. Code § 65852.2(a)(4).) By requiring that local ADU proposals go through a discretionary design review hearing, the local process is clearly out of compliance with this state law requirement. While state ADU law does allow for architectural standards, these standards can only be applied if the local ordinance complies with the other requirements of state law (Gov. Code § 65852.2(a)(1)(B)(i).) There are no provisions in state ADU law allowing for a discretionary design review process, the local Piedmont ADU ordinance is therefore on its face in violation of state ADU requirements. Further, the basis for the Planning Commission's decision on this application is a violation of state law.

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PLANNING & BUILDING DEPT.  
CITY OF PIEDMONT

If a local ADU ordinance fails to comply with state ADU requirements, it is rendered "null and void" under state law, and the city is required to process ADU applications in accordance with the state minimum standards (Gov. Code § 65852.2(a)(4).) In denying this proposed ADU based on the local design review requirements, Piedmont is attempting to enforce local regulations that are void under state law. Therefore, not only is the process by which our ADU proposal was denied invalid, but the basis for the denial is also invalid under the requirements of state law.

Lastly, the denial of our ADU permits application would violate the Housing Accountability Act (Gov. Code § 65589.5.) The Housing Accountability Act requires that local jurisdiction make certain findings based on a preponderance of the evidence in the record prior to denying a housing development that complies with all applicable objective zoning standards (Gov. Code § 65589.5(j).) As outlined extensively above, our application is fully compliant with all local planning code requirements. Even if it weren't, these standards are void under state ADU law, so the only objective standards that can legally be applied to our application are state minimum ADU standards. Piedmont made none of the required findings before denying our application, and presented no evidence to support any findings required for denial. The denial of our application is therefore also a violation of the Housing Accountability Act.

We urge the City Council to revisit this application and consider the housing crisis that we are currently in. While this one ADU is not a silver bullet to fix the housing crisis, we believe that we are at the very least moving in the right direction to creating more accessible housing in a thoughtful manner that suits our neighborhood as stated in 17.38.010 "by encouraging a mix of housing types affordable to all economic segments of the community."

We thank you for your service and your consideration.

Thank you,



Joyce Tang



Keven Kwok

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PLANNING & BUILDING DEPT.  
CITY OF PIEDMONT

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JUL 12 2019

PUBLIC WORKS CITY OF PIEDMONT

CITY OF PIEDMONT 120 VISTA AVENUE. PIEDMONT, CA 94611 TEL: (510) 420-3050 FAX: (510) 658-3167

RECEIVED BY [signature] FEE PAID \$1,870 DATE FILED 7/12/19 NUMBER 19-0195 PLANNER PMP (For staff use only) on same check w/ ADU

APPLICATION FOR DESIGN REVIEW PERMIT, review by PLANNING COMMISSION

Please complete this application form if the value of your project exceeds \$131,056 and/or one or more variances is necessary.

DESIGN REVIEW PERMIT VARIANCE ADDITIONAL VARIANCE

Fees (please add those that apply to your project)

Table with 2 columns: Fee Amount and Description. Includes entries for project value, house type, variance requirements, and a total fee note.

Property Owner Information

Form for Property Owner Information with handwritten entries: Name(s) of Property Owner(s) Kevin & Joyce Kwok, Address of Property 89 Maxwellton Road, etc.

Design Professional/Property Owner Agent Information

Form for Design Professional/Property Owner Agent Information with handwritten entries: Name of Design Professional/Agent John Newton, Address of Design Professional/Agent 5666 Telegraph Avenue, etc.

Description of proposed project NEW DETACHED ADU ON DOWNSLOPE LOT AT REAR OF HOUSE.

Estimated cost of proposed exterior improvements \$ 200,000  
(Please refer to page 13 of this application for additional information on what to include your cost estimate)

Please indicate what steps you have taken to discuss this project with your neighbors prior to submittal: MET WITH NEIGHBORS, PROVIDED INITIAL DESIGN, REVISED PLANS FOR NEIGHBOR COMMENTS PROVIDED REVISED DESIGN DRAWINGS AND STUDIES REGARDING PRIVACY

Please indicate what steps you have taken to discuss this project with city staff prior to submittal: \_\_\_\_\_

**Authorization of Design Review Permit Submittal**

My signature below signifies that I:

- have read the background document and have provided all applicable information per the attached variance and/or design review permit checklist;
- have reviewed the legal description on my property deed and indicated all recorded easements and deed restrictions on the submitted site plan (Please provide a description here of the easements and restrictions that were indicated on your property deed) N/A
- believe the information provided in this application is accurate to the best of my knowledge.
- agree to provide city staff and/or Planning Commissioners access to my property to view existing conditions and proposed construction. (Please note any special instructions regarding access to your property such as dogs, gates, alarms, etc.) \_\_\_\_\_
- understand that if this application is approved, a building permit (issued within one year from the approval date) is required for construction and that no construction may commence prior to the issuance of the building permit. No changes to the approved construction may be made without city approval, and changes may require a new application; and
- understand that that I, the property owner, shall defend (with counsel acceptable to the city), indemnify and hold harmless the city (including its agents, officers, and employees) from any claim, action, or proceeding to challenge an approval of the Planning Commission, City Council, or any officer or department concerning a permit granted under City Code Chapter 17.

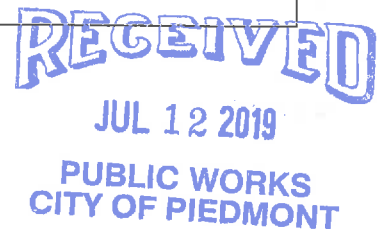
➤ SIGNATURE(S) OF PROPERTY OWNER(S) [Signature] date 7/12/2019

**Agent Authorization**

This authorization permits City staff to contact your agent if necessary.

I authorize Jean Newton to act as my agent (architect, contractor, engineer, etc.) in the processing of all matters pertaining to this application.

➤ SIGNATURE(S) OF PROPERTY OWNER(S) [Signature] date 7/12/2019



**ZONE A or ZONE E INFORMATION**

Please complete all applicable zoning information below.

Zone A or Zone E  
(Circle one)

Lot Area 10,085 square feet      Lot Frontage 85' feet

Code Requirements Zone A See §17.20.040 Zone E See §17.28.040	To Existing Structures	To Proposed Construction	Code Limit	Variance Required? (circle one)
Lot Coverage/Structures <sup>1</sup>	<u>20.6%</u>	<u>38.6%</u>	40%	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Minimum Landscaped Area	<u>63.9%</u>	<u>53.5%</u>	30% (A) / 40% (E)	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Building Height	<u>31'-11 1/2"</u>	<u>17'-8"</u>	35 ft	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Street Yard Setback <sup>2</sup>	<u>9'-2"</u>	<u>71'-9"</u>	20 ft	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
<u>Left</u> Side Yard Setback <sup>2,3</sup>	<u>14'-10"</u>	<u>36'-8"</u>	5 ft (Zone A) 20 ft (Zone E)	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
<u>Right</u> Side Yard Setback <sup>2,3</sup>	<u>5'-4"</u>	<u>6'-9"</u>	5 ft (Zone A) 20 ft (Zone E)	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Rear Yard Setback <sup>2,3</sup>	<u>50'-1 1/2"</u>	<u>7'-10 1/2"</u>	5 ft (Zone A) 20 ft (Zone E)	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Floor Area Ratio <sup>4</sup>	<u>33.9%</u>	<u>44.9%</u>	55% 0 - 5,000 sq.ft. 50% 5,001 - 10,000 sq.ft. 45% 10,001 and up sq.ft.	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

If new construction is proposed within the 20-foot street yard setback, please indicate the distance from the face of curb to the lot line or describe how the lot line was determined. Distance from face of curb to lot line is \_\_\_\_\_

(Feel free to contact city staff for assistance in determining the distance from the curb to the lot line.)

What is the total square footage of the addition(s)? 798

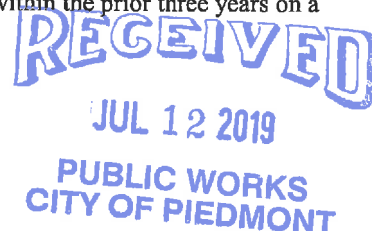
What is the maximum height of any proposed trellis, fence and/or retaining wall? (§17.90.020) 6' RET WALL

<sup>1</sup> A site feature is not calculated in the lot coverage if (1) the feature is not more than 7 feet high and (2) the total area of all site features on the lot is 400 square feet or less.

<sup>2</sup> *Setback* means the required distance that a building, structure or other designated item must be located from a lot line. Setbacks are measured from the *lot line* to the *footprint* of the *structure* or *building*. (§17.90.020)

<sup>3</sup> An accessory structure in both Zones A and E may be located anywhere within the side and rear setback areas except that it: (a) must be located within 35 feet of the rear lot line; (b) must be located at least 5 feet from a habitable structure on an abutting property, and, for a corner lot, at least 5 feet from a side lot line of an abutting lot to the rear; (c) may not exceed 15 feet in height; and (d) may not be habitable.

<sup>4</sup> The floor area ratio standard is not applied to finishing an area into habitable space if: (1) there is no expansion of the exterior building envelope; and (2) the owner has not obtained a final inspection within the prior three years on a building permit issued for an expansion of the building envelope.



§17.90.010 *Bedroom* includes any room with features generally characteristic of bedrooms, regardless of its designation on a building plan. A bedroom has adequate privacy and meets the minimum size and habitation requirements of the Building Code. It includes and is not limited to a room with: (a) access to a full bathroom on the same floor or within half a floor, if the house has a split level; (b) access to a full bathroom through a common hallway or other common space such as a kitchen, living room and/or dining room. A *bedroom* need not have a closet.

Based on the definition above, how many *bedrooms* are existing: 4

What is the total number of *bedrooms* under the current proposal: 6

If this application results in the net addition of one or more *bedrooms*, additional conforming parking spaces may be required on the property. The number of conforming parking spaces required is as follows:

Dwelling unit is 700 square feet or less	1 conforming parking space required
1 – 4 <i>bedrooms</i> <sup>5</sup>	2 conforming parking spaces required
5 – 6 <i>bedrooms</i>	3 conforming parking spaces required <sup>6</sup>
7 or more <i>bedrooms</i>	4 conforming parking spaces required <sup>6</sup>

A conforming parking space is covered, non-tandem, and at least 8-½ feet wide by 18 feet deep, 7-½ feet wide by 15 feet deep for a compact space. A minimum 1-foot clearance must be provided between the length side of a parking space and the nearest wall or similar obstruction.

How many existing conforming parking spaces are there on the property? 2

Please describe any additional parking on the property that does not meet the definition of a conforming parking space: 2 tandem spaces in driveway in front of garage

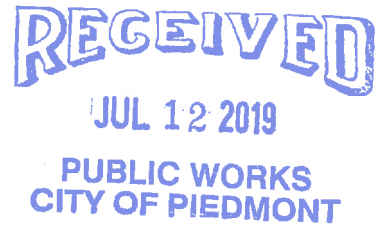
If this application results in the net addition of a room eligible for use as a bedroom, please describe how this application proposes to meet the parking requirements: NEW BEDROOMS IN ADD DO NOT REQUIRE ADDITIONAL PARKING

Please describe the proposed parking on the property that is covered, non-tandem, and at least 8-1/2 feet wide by 18 feet deep: TWO GARAGE SPACES 10'-3" X 20'-2" & 10'-9" X 22'-2"

<sup>5</sup> An applicant may increase the primary dwelling unit up to four bedrooms without adding additional parking, as long as:

- no existing parking space is eliminated if it creates a nonconformance;
- the required number of parking spaces are provided, even if uncovered or tandem;
- the parking spaces are not within the required 20 foot street setback; and
- the project does not fall under the provisions of City Code Section 17.30.010(B)(4).

<sup>6</sup> In Zone A, one of every three required parking spaces may be for a compact car



## DESIGN REVIEW PERMIT STANDARDS

(To be completed by the applicant.)

The hearing body (the Planning Commission or City Council) may not approve a design review permit unless the design of the project conforms to all the standards listed below (§17.66.060). Please describe how the proposed project meets the standards for approving a design review permit:

A. The proposed design is consistent with the City's General Plan and Piedmont Design Guidelines. (Describe how the project's exterior design elements are aesthetically pleasing as a whole and harmonious with existing and proposed neighborhood development. These elements include but are not limited to: height, bulk, area openings, breaks in the façade, line and pitch of the roof, materials, arrangements of structures on the parcel, and concealment of mechanical and electrical equipment. You may cite specific guidelines and General Plan goals and policies.)

The ADU has pitched roofs similar to the traditional main house and matching board & batten siding, trim, stucco & windows to the main house. The ADU is set into GRADE TO MINIMIZE visible massing.

B. The design has little or no effect on neighboring properties' existing views, privacy, and access to direct and indirect light.

The ADU is set into the slope and has low-sloped roof pitches to minimize overall height relative to adjacent structures. windows on the right side set with high sills where possible to minimize privacy impacts to side. The rear location will make the ADU barely visible from the front and left side and is minimally visible to the right side.

C. The proposed design does not adversely affect pedestrian or vehicular safety.

There will be no impact to vehicular access to the property & a path on grade will be safe access to the ADU.

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CITY OF PIEDMONT

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City of Piedmont  
CALIFORNIA



## MEMORANDUM

DATE: August 12, 2019

TO: Planning Commission

FROM: Pierce Macdonald-Powell, Senior Planner

SUBJECT: STAFF REPORT FOR 89 Maxwellton Road

### AGENDA ITEM NUMBER 9

#### APPLICATION SUMMARY:

DESIGN REVIEW PERMIT

#19-0195

Keven and Joyce Kwok  
89 Maxwellton Road

The applicants request a design review permit to construct a 798-square-foot, single-story accessory structure and associated site changes pursuant to section 17.38.070.B of the Piedmont City Code. This application follows a previously approved proposal to construct a single-family residence.

**NOTE:** The submitted plans also depict a separate application to use the accessory structure as an accessory dwelling unit (ADU), which is not subject to the approval of the Planning Commission (in accordance with state law governing the approval of ADUs and Division 17.38 of the City Code). This ADU application will be ministerially processed under a separate application #19-0196 by staff pursuant to state and Piedmont law if the proposed new accessory structure is approved under the scope of this application. ADUs meeting state law requirements are not subject to discretionary review or public hearing. The floor plans and elevations for the accessory dwelling unit are included in this application submittal since they graphically describe the physical characteristics of the new accessory structure, which *is* subject to the Commission's review as part of this application.

#### APPLICATION HISTORY:

The application to construct an ADU follows the approval of a new residence on the vacant property at 89 Maxwellton Road, approved by the Planning Commission on December 10, 2018.

On December 10, 2018, the Planning Commission held a public hearing to consider an application requested by the property owners. The previous two applications were not approved by the Planning Commission. The third application requested variances and design review permit to construct a new 3,900-square-foot residence and 487-square-foot, two-car garage, including tree removals and new retaining walls, driveway bridge, patios, site steps, exterior lighting, doors, windows, porches, decks, railings, trash enclosure, landscaping and other changes. Variances were required for construction of a structure in the street yard (north) setback and for construction of a patio within the street yard setback. The applicants withdrew a previously filed application for an accessory dwelling unit. At the conclusion

of the public hearing, the Planning Commission voted unanimously to approve the variances and design review permit. The staff report and meeting minutes for the December 10, 2018 meeting are included with this report as Attachments B and C. The property owners submitted an application for a building permit on March 9, 2019 and have responded to Building Division comments and requirements. A building permit has not been issued, and the site is currently undeveloped.

CODE COMPLIANCE:

The residence is situated on a conforming lot in zone A. The lot contains approximately 10,084 square feet of area and 85 feet of frontage. The minimum lot area required in the City Code (section 17.20.040) is 8,000 square feet and the minimum lot frontage (section 17.20.040) is 60 feet. *Complies.*

The previously approved structure coverage is 30.4% and is proposed to be 31.2%. The maximum limit in the City Code (section 17.20.040) is 40%. *Complies.*

The previously approved landscape coverage is 63.9% and is proposed to be 63.2%. The minimum limit in the City Code (17.20.040) is 30%. *Complies.*

The building height (average) of the accessory structure is proposed to be 14 feet. The maximum limit in the City Code (section 17.20.040) is 35 feet. *Complies.*

The right (west) side yard setback of the accessory structure is proposed to be 6 feet 9 inches measured to the west wall of the accessory structure. The minimum required side yard setback in the City Code (section 17.20.040) is 5 feet. *Complies.*

The left (east) side yard setback is proposed to be 36 feet 8 inches measured to the east wall of the accessory structure. The required side yard setback in the City Code (section 17.20.040) is 5 feet. *Complies.*

The rear (south) yard setback is proposed to be a minimum of 10 feet 4 inches measured to the rear wall of the accessory structure. The required rear yard setback in the City Code (section 17.20.040) is 5 feet. *Complies.*

The approved residence is proposed to have four bedrooms and two covered, non-tandem parking spaces each measuring at least 8 feet 6 inches by 18 feet in a garage with one foot of clearance for opening car doors along the east and west walls. This condition satisfies the parking requirements of section 17.30 of the City Code (two covered, non-tandem parking spaces each measuring at least 8 feet 6 inches by 18 feet are required). No parking spaces are required for the proposed accessory structure. *Complies.*

The floor area ratio is proposed to be 38.5%, or 46.5% including the new accessory structure. However, pursuant to section 17.38.070.B of the Piedmont City Code, the application is eligible for an exemption to the floor area ratio limit without a rent restriction because the property owner is proposing both a new primary residence and an accessory dwelling unit. The square footage of the accessory dwelling unit will not count toward the total floor area ratio for the property up to 800 square feet or 10% of the lot size, whichever is less. The floor area of the proposed accessory structure is less than 800 square feet and less than 10% of the lot size. *Complies.*

No changes are proposed to the approved street yard setback.

DESIGN REVIEW PERMIT:

The existing property is unimproved and slopes steeply downward from the street with frontage on Maxwellton Road. Currently, the lot has approximately thirteen mature redwood trees, several oaks, and other trees. The proposed single-story, 798-square-foot accessory structure follows the previous approval of a new three-story Craftsman style house with 3,900 square feet of floor area, four bedrooms, and a 487-square-foot, two-car attached garage.

The Craftsman-style accessory structure is proposed to be located to the rear of the rear of the main residence. It would have the following features: a gabled asphalt-shingled roof with 3 in 12 slope and 2-foot eaves; walls finished with board and batten siding, stucco siding, and wood trim; and fiberglass windows and doors, except for a solid wood front entry door. New exterior lighting is proposed at either side of the entry to the accessory structure. The approved residence has a gabled asphalt shingle-roof with 6 x 6 inch Redwood braces or corbels, 2-foot-wide eaves, and a 6 in 12 slope roof (some areas above the approved garage would have a 2 in 12 roof slope).

Proposed windows and doors would match the style and construction of those approved for the new single-family residence. Windows would provide a 2-inch recess measured from the sash to the wall plane. Proposed eaves would include V-groove Redwood planks in the soffit.

The application proposes to remove a 16-inch-diameter oak tree and a 12-inch-diameter oak tree. Total proposed and previously approved landscaping for the project consists of removal of nine mature redwood trees and three oak trees; preservation of four mature redwood trees, three mature oak trees, and a mature spruce; and planting a mix of trees, shrubs, and smaller plants. Rows of podocarpus trees continue to be proposed along the left and right property lines. As conditioned, an arborist will prepare a tree preservation plan for the trees shown to remain on the landscape plan, including measures to protect trees during construction, including protections from grading within the root zones of trees.

The application continues to propose the approved steps on grade in the right side yard setback, which in the current application would now lead from the public right-of-way to the entrance patio of the accessory structure. Steps would be constructed of railroad ties. Retaining walls would be concrete.

The previously approved trash enclosure would receive the waste disposal for the inhabitants of the proposed accessory structure.

ADDITIONAL INFORMATION:

The proposed construction includes grading on a lot with a 42.3% slope. The proposed accessory dwelling unit would entail grading an additional 78 cubic yards of soil, for a total off-haul of 242 cubic yards. A geotechnical report for the site prepared by Summit Engineering, dated September 11, 2014, and submitted for the Chief Building Official's review, found the site to be suitable for the construction built on piers embedded in native stone. The geotechnical report is included as Attachment D. The proposed residence is not located within the Hayward Fault Special Studies Zone.

The new home and accessory structure are proposed on a narrow winding road with limited access. Traffic control for the duration of construction will be a required part of the construction management plan, which is a standard City requirement and condition of approval for design review permits. Although the area is not located within the Wildland Urban Interface zone (WUI), the project and all new residences in Piedmont will be protected by an automatic fire sprinkler system.

Attachment A of the staff report includes a list of General Plan programs and policies for the Planning Commission to consider in reviewing the proposed construction at 89 Maxwell Road. The following General Plan goal and policy are related to the engineering of the residence and the safety of the proposed construction. These goal and policy ensure that the Piedmont community and all residences built on hillside lots in Piedmont are safe from geologic hazards pursuant to state and local regulations.

**Environmental Hazards Goal 18: Geologic Hazards** – Minimize the loss of life, personal injury, and property damage resulting from earthquakes, landslides, unstable soils, and other geologic hazards.

**Environmental Hazards Policy 18.4: Soil and Geologic Reports** – Require site-specific soils reports and geologic studies in instances where development may be exposed to substantial geologic or seismic hazards, including ground shaking and landslides. Ensure that any identified hazards are appropriately mitigated.

#### CEQA:

Potential environmental impacts related to the project have been reviewed by staff pursuant to the California Environmental Quality Act (CEQA). Section 15303 (a) of the CEQA guidelines provides for a categorical exemption for the construction of a single-family residence and accessory dwelling unit in a residential zone. The findings in support of this determination are as follows:

- (a) there is no cumulative impact because the application proposes a single house and accessory dwelling on the lot, the project retains a majority of the existing mature native trees, and there is no reasonable probability of a significant effect on the environment;
- (b) the current application proposes a structure that is stepped with the slope of the lot, minimizing the amount of grading and 242 cubic yards net of off-haul;
- (c) submitted geotechnical evidence indicates that the proposed lot has a rock base;
- (d) geotechnical, soils and structural engineers will be involved in the development/ construction process and there is no evidence that there will be a significant effect on the environment;
- (e) based upon the submittals from the applicant's geotechnical expert, the possibility of a landslide or subsidence on the project lot is unlikely; and
- (f) there is no substantial evidence that any exception to the Class 3 Categorical Exemption applies to this project, specifically including the unusual circumstances exception.

Should the Commission wish to make the required design review findings to approve the project, the Commission is asked to:

- A. Determine that the project is categorically exempt under the California Environmental Quality Act, pursuant to Section 15303, Class 3 (a) of the CEQA Guidelines because the project consists of one single-family residence and accessory dwelling unit to be constructed within a single-family zoning district, because there are no unusual circumstances associated with the property or the project, because existing General Plan policies and programs are sufficient to address the proposed grading,

excavation, and construction, and because there is no substantial evidence that any exception to the Class 3 Categorical Exemption applies to this project, specifically including the unusual circumstances exception; and

- B. Take action on the design review permit, making the findings under Section 17.66.060; and
- C. Consider the following conditions of approval:
1. **Approved Plans.** Plans submitted for building permit for the accessory structure must match plans dated received July 24, 2019, unless modified by the conditions of approval herein. A single building permit shall be issued for the construction of the residence and accessory structure.
  2. **Licensed Design Professional Required.** In conformance with the Architects Practice Act, Business and Professions Code section 5500 et seq., all plans, specifications, and other instruments of service submitted for review and approval of a building permit for the proposed construction project, must be prepared by or under the responsible control of, and stamped and signed by, a properly licensed design professional.
  3. **Handrail and Step Lights.** Plans submitted for building permit shall show a handrail on at least one side of the steps on grade along the west property line with shielded step lights. Design of the handrail and step lights shall be subject to staff review and approval.
  4. **Fire Sprinklers.** Plans submitted for building permit shall show that the accessory structure shall be equipped with an automatic fire sprinkler system meeting the design requirements of the Building Official.
  5. **Window and Door Material.** As specified in the plans, the building material for the new windows and doors shall be fiberglass, except for the wood front door.
  6. **Window Color Scheme.** All the windows on the house shall have a consistent color scheme.
  7. **Window Recess.** All new windows shall be recessed 2 inches from the exterior wall to the face of window sash in order to maintain consistency, as required by the City's Design Guidelines and Window Replacement Policy. Window details shall be submitted for review and approval at the time of building permit application.
  8. **Pre-construction Inspection.** Prior to the commencement of window fabrication, the installer shall schedule a pre-construction inspection with the Building Department to review the approved installation criteria, such as the window recess, window trim if any, and window sill projection if any.
  9. **Roof Color.** The proposed roof shall be a non-reflective medium or dark color to minimize the visual impact on upslope properties.
  10. **Exterior Lighting.** All new exterior light fixtures shall be downward directed with an opaque or translucent shade that completely covers the light bulb.
  11. **Conditions of Approval for #18-0331.** All conditions of approval for the prior approved project application #18-0331 remain in full force and in effect and apply to this approval. Applicant shall maintain the security deposits and insurance in the full amount required under the conditions of approval for project application #18-0331 until the approval of final inspection by the City for this project and project application #18-0331.
  12. **Defense of Legal Challenges.** If there is a third party administrative, legal or equitable action challenging the project approvals, including CEQA issues, the Property Owner shall defend and

indemnify the City against any liability, fees and costs arising out of the defense, including the costs of City's own counsel. If such an action is filed, the Property Owner and City shall then enter into an agreement regarding selection of counsel and other provisions related to the defense. For this purpose, "City" includes the City and its elected and appointed officials, agents, officers and employees.

13. **Neighboring Property Inspection.** Should the neighboring property owner provide consent, a licensed civil or structural engineer (chosen by the City, and paid for by the Property Owner) shall inspect neighboring homes and retaining walls at 16 Nellie Avenue and 5, 7, and 81 Maxwellton Road, with the intent of establishing base-line information to later be used in determining whether damage was caused by any activities on Property Owner's property (including damage caused by vibrations or other factors due to excavation, construction or related activities). The inspection shall include both foundations and non-foundation related details (walls, windows, general overall condition, etc.) at a level of inspection City Staff deems appropriate. The inspection shall only include readily visible and accessible areas of the neighboring homes. The licensed civil or structural engineer shall provide a full report to the City of his or her conclusions, and the report may be considered in developing the Construction Management Plan. If other independent consultants or specialists are required by the City to review plans and monitor construction activity, they shall be retained at the Property Owner's cost. Before a neighbor agrees to an inspection, City will advise neighbors that the property inspection is necessarily a public record under the California Public Records Act.

Within 45 days after the Certificate of Occupancy is issued on Property Owner's property, the same licensed civil or structural engineer chosen by the City (or a substitute licensed civil or structural engineer chosen by the City) shall inspect the same area in each neighboring home and property initially inspected, and shall present to the City a Report detailing any evidence of apparent damage that has been or reasonably might have been caused by activities on the Property Owner's property. The Report may include text, photographs, diagrams, or other evidence that would document the apparent damage. The Report will become a public record and may be used in connection with private causes of action.

Design Review Guidelines which may be used for reference are listed as Attachment A beginning on page 8.

#### DESIGN REVIEW FINDINGS:

To approve this application for design review permit, the Planning Commission must make findings that the application complies with the design review criteria under Section 17.66.060 as noted below. The **applicant's** proposed findings are indicated in **bold**.

(A) The proposed design is consistent with the City's General Plan and Piedmont Design Guidelines: **The ADU has pitched roofs similar to the traditional main house and matching board & batten siding, trim, stucco and windows to the main house. The ADU is set into grade to minimize visible massing.**

(B) The design has little or no effect on neighboring properties' existing views, privacy, and access to direct and indirect light: **The ADU is set into the slope and has low-sloped roof pitches to minimize overall height, relative to adjacent structures. Windows on the right side set with high sills where possible to minimize privacy impacts to side. The rear location will make the ADU barely visible from the front and left side and is minimally visible to the right side.**

(C) The proposed design does not adversely affect pedestrian or vehicular safety: **There will be no impact to vehicular access to the property and a path on grade will be safe access to the ADU.**

CLEANWATER CONSIDERATIONS:

The newly approved residence and proposed project will create 2,500 square feet or more of impervious surfaces and may result in significant changes to water runoff at the site. Incorporation of site design measure(s) into the plans submitted for a building permit as required under Provision C.3.i of the Municipal Regional Stormwater NPDES Permit is required.

CITY COUNCIL ACTION REQUIRED:

No City Council action is required unless the decision of the Planning Commission is appealed.

ATTACHMENTS:

- Attachment A Pages 8-13 Design Review Guidelines for New Construction and Accessory Dwelling Units and Applicable General Plan Policies
- Attachment B Pages 14-28 December 10, 2018, Planning Commission Staff Report (without attachments)
- Attachment C Pages 29-42 Minutes of the December 10, 2018 Planning Commission Meeting
- Attachment D Pages 43-74 Geotechnical Report, prepared by Summit Engineering

## **DESIGN REVIEW GUIDELINES**

### **3.03 SITE DEVELOPMENT**

#### **3.03.01 SIGNIFICANT VIEWS**

3.03.01.1 The siting and construction of a new or modified existing structure, including its site plantings at mature growth, should make all reasonable efforts to avoid adverse impacts on significant views currently available to existing nearby residences.

#### **3.03.02 VISUAL AND ACOUSTICAL PRIVACY; ACCESS TO DIRECT OR INDIRECT LIGHT**

3.03.02.1 The siting of a new or modified existing structure, the location of its exterior openings, and the location of exterior mounted appliance ventilation and exhaust ports should respect the visual and acoustical privacy of the residences located on contiguous properties, including their outdoor living areas or open spaces.

3.03.02.2 The siting of a structure and its landscaping should clearly differentiate between the public right-of-way and the private space of the structure, giving the appearance that its occupants control their private space.

3.03.02.3 The siting of a structure and the openings into its rooms 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 its occupants, allowing for “eyes on the street.”

3.03.02.4 The entryway to the new residence should be obvious and observable from the street.

#### **3.11.03 ON-SITE DESIGN PRINCIPLES**

3.11.03.1 Minimize impacts on existing terrain.

3.11.03.2 Use natural drainage channels and on-site storm water drainage management opportunities.

3.11.03.3 Preserve and incorporate existing mature trees as part of the overall landscape design.

3.11.03.4 Use landscaping within side and rear setback areas to reinforce property lines and minimize the need for fencing between separate outdoor spaces.

3.11.03.5 Avoid locating structures within the drip line of existing mature trees or within riparian zones.

3.11.03.6 Rear yard gardens should provide plantings with usable open space.

3.11.03.7 When possible, use a variety of plant materials in the palette to have a layered effect of size and species. Consider the need for wind breaks, the need for shading in South and West facing areas, while choosing plant materials conducive to sunny and shaded zones within the lot.

3.11.03.8 Use native plant species, drought tolerant or climate appropriate planting materials. Consider following Bay-Friendly Landscape Guidelines when designing your garden.

3.11.03.9 Avoid invasive plant species or flammable mulch, such as shredded redwood bark,



also known as “gorilla hair.”

3.11.03.10 Consider the eventual height and width of plant materials when planting near property lines, buildings, site features, streets and sidewalks.

3.11.03.11 Use drip irrigation systems to establish newly planted materials, but choose species that will primarily survive on rainfall.

3.11.03.12 Use permeable paving as part of the hardscape materials, when possible. Pavers should be light in color with a high solar reflective index.

3.11.03.13 Consider planting strips at driveways

3.11.03.14 On-site asphalt driveway paving and on-site driveway and walkway solid white concrete paving should be discouraged. Colored concrete or pavers are recommended for on-site driveways and walkways

### **3.12 EXTERIOR LIGHTING**

#### **3.12.01 NEIGHBORHOOD AND CONTIGUOUS PARCEL COMPATIBILITY**

3.12.01.2 Use “Dark Sky Compliant” exterior light fixtures that are shielded and directed downwards to prevent light trespassing from a subject property to neighboring properties. The use of floodlights is discouraged.

#### **3.12.02 ON-SITE AESTHETIC DESIGN, COMPATIBILITY AND SAFETY**

3.12.02.1 Complement the light fixture design with the architectural character and building elements being illuminated.

3.12.02.2 Conceal electrical boxes from public view. Conduits should not be exposed on exterior walls and should be embedded either in walls or landscaping.

3.12.02.3 Locate low level lighting to ensure entry paths, entry stairs and driveways, garage and building entries are adequately illuminated.

3.12.02.4 When used, provide motion sensors that are adjustable, to prevent them from rapidly flashing on and off when activated.

### **4.02 BUILDING ELEMENTS**

#### **4.02.01 ON-SITE AESTHETIC DESIGN CONSISTENCY**

4.02.01.1 **Foundations:** The appearance of the foundation of an addition should match the appearance of the foundation of an existing structure, so that it appears that the two are continuous. This is especially important for those portions of the foundation which will be visible from the street and adjacent parcels.

4.02.01.5 **Stairs:** Exterior stairs should be consistent with the architectural style of the structure, especially if they will be visible from the street. Consistency also applies to stair railings. If it is cost prohibitive to exactly replicate the original stair railings, the original design should be followed in simplified form.

4.02.01.6 **Doors:** Doors for new structures and additions, as well as new or replacement doors for existing structures, should be consistent with the architectural style of the building, while maintaining its security.

**4.02.01.7 Exterior Wall Material:** The material used on the exterior walls of an addition or remodeled portion of a structure should be consistent with the design integrity of the existing building. This may be achieved using different, yet compatible materials (above left), or by matching the materials of the existing structure (above right).

**4.02.01.9 Ornamentation; New Construction:** The ornamentation and design details within new construction should be consistent with and help define the architectural style of the building.

**4.02.01.11 Roof; New Construction:** When a roof design is established for a new structure, the type, slope and details of the roof should be consistent throughout the building. This does not mean that all roof slopes have to be identical, however the composition of the roof forms should be consistent with the style of the building.

#### **4.03.04 ON-SITE AESTHETIC DESIGN COMPATIBILITY; WINDOWS IN NEW CONSTRUCTION**

**4.03.04.1** The size, type, proportion, placement, details and materials of windows should be compatible with the overall building style. Window elements that should be addressed include the frame, the pattern of the lites defined by the muntins, and the trim used to surround the frame.

**4.03.04.2** Windows should be used to modulate the building facade, to help diminish its mass and scale.

**4.03.04.3** Windows should be recessed from the face of the building wall to create a distinct shadow line.

**4.03.04.4** Creating a hierarchy of primary and secondary window sizes and types helps organize the character of the window design. By limiting the number of different window sizes and types, the overall rhythm of the building design is maintained, preventing the placement of windows from appearing arbitrary.

**4.03.04.5** Reflective or opaque tinting of glazing is prohibited.

**4.03.04.6** The provisions outlined in Piedmont Design Guidelines Sec. 4.03.03.6 for simulated divided-lite grilles also apply for new construction.

**4.03.04.7** The use of non-traditional window materials and details that are incompatible with a building style, such as foam-based stucco trim on stucco walls, is prohibited.

#### **4.05 GREEN BUILDING MEASURES AND RENEWABLE ENERGY FEATURES**

##### **4.05.02 ON-SITE LANDSCAPE DESIGN PRINCIPLES**

**4.05.02.1** Protect existing soil conditions and mature planting.

**4.05.02.2** Encourage the selection of drought tolerant plant materials that are compatible with local climate and topography and that require little or no irrigation during the dry season.

**4.05.02.3** Encourage the employment of Bay-Friendly Landscaping principles in landscape design and maintenance.

**4.05.02.4** Strategically place shade trees to reduce building energy consumption.

**4.05.02.5** Develop efficient irrigation systems that use plant-specific or pop-up irrigation

emitters to eliminate excessive water use.

4.05.02.6 Consider treating storm water on-site as much as possible, using devices such as bioretention planter boxes, cisterns, bioswales, vegetated swales and rain gardens to prevent excessive water runoff.

4.05.02.7 For paved areas, consider using permeable paving, as recommended in Chapter 3, Section 3.11 of the Guidelines, to reduce water runoff.

#### **4.05.03 ON-SITE BUILDING DESIGN PRINCIPLES**

4.05.03.1 Consider using recycled materials or framing and finish materials with a high recycled content, when practical. This includes the use of concrete that incorporates recycled fly ash or slag instead of Portland cement.

4.05.03.2 Use sustainably harvested materials or rapidly renewable materials, such as those certified by the Forest Stewardship Council.

4.05.03.3 Consider using locally sourced materials when practical.

4.05.03.4 Encourage the use of passive solar principles, including the appropriate placement of windows along a building's southern exposure and daylight interiors as much as possible.

### **5.03 ACCESSORY DWELLING UNITS**

#### **5.03.01 NEIGHBORHOOD AND CONTIGUOUS PARCEL COMPATIBILITY**

5.03.01.1 The siting of a new attached or detached accessory dwelling unit should be visually integrated with the neighborhood and respect adjacent properties.

#### **5.03.02 ON-SITE AESTHETIC DESIGN COMPATIBILITY**

5.03.02.1 An accessory dwelling unit may be free standing or attached to the primary residence, such as a horizontal addition to the primary residence or a vertical addition above a garage. The style of the accessory dwelling unit should be compatible with the building style of the main residence. In each case, the accessory dwelling unit should have an entry that is compatible with the entry to the primary residence.

### **APPLICABLE GENERAL PLAN POLICIES**

#### **Natural Resources and Sustainability Element Policy 13.4: Conserving Native Vegetation**

Require new development (including expansion of existing residences and major landscaping projects) to protect native vegetation, particularly woodland areas that support birds and other wildlife.

#### **Natural Resources and Sustainability Element Policy 14.4: Retention of Healthy Native Trees**

Encourage the retention of healthy native trees as new construction takes place, including home additions and landscaping projects. Existing significant trees should be conserved where feasible when development takes place.

#### **Natural Resources and Sustainability Element Policy 16.4: Permeable Pavement**

Encourage the use of permeable materials for parking lots, driveways, walkways, and other paved

surfaces as a way to absorb stormwater, recharge the aquifer, and reduce urban runoff.

**Natural Resources and Sustainability Element Policy 16.5: Hardscape Surface Standards**

Maintain hardscape (impervious) surface standards in the Piedmont Municipal Code as a way to retain stormwater absorption capacity and reduce runoff to the storm drainage system. Consider other methods to reduce runoff, such as green roofs, rain barrels, and cisterns.

**Design and Preservation Element Policy 28.1: Scale, Height, and Bulk Compatibility**

Strengthen the defining qualities of Piedmont neighborhoods by relating the scale of new construction, additions, and alterations to existing homes and neighborhood context. Overpowering contrasts in scale and height on adjacent lots should be avoided.

**Design and Preservation Element Policy 28.2: Style Compatibility**

On blocks where one architectural style or design theme is predominant, require new construction and alterations that respect and are compatible with the prevailing style. On blocks where no particular style is predominant, new construction and alterations should be compatible with the style of homes nearby. This applies not only to the house as a whole but to building elements such as foundations, porches, exterior stairs, doors, exterior materials, ornamentation, roofs, and doors.

**Design and Preservation Element Policy 28.6: Exterior Materials**

Encourage the use of exterior materials that are appropriate to the property, neighborhood and natural setting.

**Design and Preservation Element Policy 28.7: Hillside Home Design**

On steep hillside sites, take advantage of topography and views and encourage designs that reduce effective visual bulk. New hillside homes should follow the contour of the slope, with buildings broken into several horizontal and vertical elements rather than large building planes.

**Design and Preservation Element Policy 29.6: Retaining Walls**

Minimize the visual prominence of retaining walls by requiring construction in a stepped or terraced fashion where feasible. Landscaping should be used as necessary to minimize the visual impact of larger walls.

**Land Use Element Policy 1.2: Neighborhood Conservation**

Sustain the balance between homes, private yards, and public space that defines Piedmont's residential neighborhoods. The essential form of the city's residential areas—including the scale and appearance of its homes, the mature vegetation, the views and vistas, the appearance of streets and public places, and the street layout—should be maintained for the long-term future.

**Housing Element Policy 6.7: Water Conservation**

Encourage drought-tolerant and bay friendly landscaping as a way to conserve water, reduce greenhouse gas emissions associated with water transportation, and reduce homeowner water bills, thereby freeing up more income for other purposes.

**Environmental Hazards Policy 18.4: Soil and Geologic Reports** – Require site-specific

soils reports and geologic studies in instances where development may be exposed to

substantial geologic or seismic hazards, including ground shaking and landslides. Ensure that any identified hazards are appropriately mitigated.

Conformance with General Plan Policies and Programs including the Land Use Element, Housing Element, and Design and Preservation Element. The City of Piedmont General Plan is available at <http://www.ci.piedmont.ca.us/draft-general-plan/>.

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**SUMMARY OF RESPONSES  
FOR**

**APPLICANT: Keven and Joyce Kwok**

**ADDRESS OF PROPERTY: 89 Maxwellton Road**

**MEETING DATE: August 12, 2019**

**APPLICATION TYPE: Design Review Permit**

**APPLICATION #: 19-0195**

EXHIBIT F  
**Planning Application Comment Form**  
Please submit this form by 4:30 p.m. August 8, 2019

On **Monday, August 12, 2019**, the Piedmont Planning Commission will consider the application of Keven and Joyce Kwok for Design Review Permit at **89 Maxwellton Road**. In evaluating the application, the Commission will consider the exterior design of the proposed construction including its effect on neighboring properties' existing view, privacy, access to direct and indirect light and public safety. Your comments regarding the proposed construction and its effect on your property are welcome. You may submit comments in writing by completing this form and returning it to City Hall, 120 Vista Avenue, by 4:30 p.m. **Thursday, August 8, 2019**. If you wish, you may also attend the public hearing on the application and express any opinions you so desire.

Name (please print) Philip and Jenn Stein  
Address 16 Nellie Ave  
Telephone Number 510-654-2772

Did you review the plans or discuss the project with the applicant? Yes  No

I/We support the application for design review: Yes  No

Comments:

We respectfully suggest the Commissioners consider this application as a continuum beginning three years ago with the first of three applications for the construction of the Kwok main residence at 89 Maxwellton. The applicants' initial application for a 4,916 sq ft residence was unanimously rejected by the Commission at its June 12, 2017 meeting. At that time, Commissioners found the project inconsistent, out of scale, and unharmonious with neighboring properties and adversely affecting pedestrian and vehicular safety.

A second application was denied, and a third and "final" application was approved after the project was downsized 20% and moved further back on the site. We believe the current application is substantially the same as the one rejected by the Commission in 2017 and is simply an attempt to circumvent the Commission's finding and thwart the consistent objections of neighbors.

We object to the pending application for design review for a 798 sq ft accessory structure at 89 Maxwellton Road. We believe this proposed addition will:

1. add significant mass and coverage to a residential compound that already dominates its immediate neighbors and significantly changes the character of the neighborhood, and
2. will drastically reduce already scarce parking for guest, delivery, emergency, and service vehicles in the only three spaces that serve the entire uphill Maxwellton Road/Nellie Avenue area.
3. We also have serious concerns about the adverse effect the additional unit and concurrent loss of parking will have on safety and an already heavy traffic flow — particularly given the significant increase of very young children and grandchildren in the immediate neighborhood. Maxwellton Road is a narrow, winding street with no sidewalks. Traffic regularly exceeds the speed limit, and drivers use the Nellie Avenue intersection as a turnaround. The proposed addition of two family units rather than just one introduces not only inconveniences, but real new hazards to children, other pedestrians and vehicles on a road never intended to support dense housing.

**RECEIVED**

Signature Jenn L. Stein

Date 8/8/2019

AUG 08 2019

PLANNING & BUILDING DEPT.  
CITY OF PIEDMONT



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Name (please print) Lucas and Mojdeh Tomsich

Address 81 Maxwellton Road

Telephone Number (612) 867-4242

Did you review the plans or discuss the project with the applicant? Yes X No       

I/We support the application for design review: Yes        No X

**Comments:**

We object to the addition of the ADU for three primary reasons. First, the applicants recently received approval for a house at 89 Maxwellton. We, along with the majority of the neighborhood, opposed the first two submissions of the house plans. Our opposition was based on the initial house size of three stories and around 5,000 square feet, which was out of proportion to the surrounding houses, and especially to our neighboring single story 1,900 square foot house. We agreed to support the third submission for the house after the applicants agreed to remove the ADU, which reduced the square footage by 800 square feet. The applicants did not tell us at that time that they intended to submit the ADU separately at a later date. We were surprised and upset when we received a letter several months later explaining they changed their minds on the ADU, and wanted to add it back as a detached unit. This felt like an end-run around the difficult compromise we brokered. So we are back to square one, and renew our objections to the mass, scale, and proportionality of the site as a whole.

Second, as we explained to the applicants, we have privacy concerns regarding renters walking down stairs that run along our property line on the steep hillside of 89 Maxwellton. As our house sits significantly down the hill, when renters first begin walking down steps toward our house, they would have a direct line of site into our kitchen. The applicants have indicated they would grow vegetation that would shield this view, but we remain skeptical, given the steepness of the hill, that anything less than a 15 to 20 foot high wall would prevent renters from looking into our kitchen. Even if vegetation would work -- and we doubt that it would -- it would take years to grow high enough and fill in.

Third, as the story poles for the ADU currently sit, the peak of the roof is only a couple feet off the ground. This suggests that 15 to 20 feet of excavation will be necessary, which concerns us given the proximity of the ADU to our house's foundation.

**RECEIVED**

Signature Lucas and Mojdeh Tomsich Date 8/8/2019

AUG 08 2019

EXHIBIT F  
**Planning Application Comment Form**  
Please submit this form by 4:30 p.m. August 8, 2019

On Monday, August 12, 2019, the Piedmont Planning Commission will consider the application of Keven and Joyce Kwok for Design Review Permit at **89 Maxwellton Road**. In evaluating the application, the Commission will consider the exterior design of the proposed construction including its effect on neighboring properties' existing view, privacy, access to direct and indirect light and public safety. Your comments regarding the proposed construction and its effect on your property are welcome. You may submit comments in writing by completing this form and returning it to City Hall, 120 Vista Avenue, by 4:30 p.m. **Thursday, August 8, 2019**. If you wish, you may also attend the public hearing on the application and express any opinions you so desire.

Name (please print) LINCOLN CHU

Address 12 NELLIE AVENUE

Telephone Number 510-547-4250

Did you review the plans or discuss the project with the applicant? Yes  No

I/We support the application for design review: Yes  No

Comments:

PLEASE SEE ATTACHED COMMENTS.

**RECEIVED**

AUG 08 2019

PLANNING & BUILDING DEPT.  
CITY OF PIEDMONT

Signature  Date 8/7/19

Date: August 8, 2019

To: City of Piedmont Planning Commission

From: Lincoln and Lena Chu, 12 Nellie Avenue

Subject: Application for Design Review Permit at 89 Maxwelton Road

We are hereby submitting our comments regarding the application for Design Review Permit at 89 Maxwelton Road.

We oppose the subject application, simply because the design is, even after several review cycles, still too large and out of character with the surrounding neighborhood. Along with its size and bulk will come problems with parking, traffic, and additional noise.

As you know, Maxwelton is a very tight and curvy street, with very limited sightlines and steep grades. We are very concerned about the addition of such a large structure and its ADU, which will substantially increase pressure on an already potentially unsafe public thoroughfare. It directly impacts our access to our property, especially so because so many cars use the intersection of Maxwelton and Nellie to make u-turns on Maxwelton.

We urge you to reject the subject application.



Lincoln Chu



Lena Chu

**RECEIVED**

AUG 08 2019

PLANNING & BUILDING DEPT.  
CITY OF PIEDMONT

On Monday, August 12, 2019, the Piedmont Planning Commission will consider the application of Keven and Joyce Kwok for Design Review Permit at 89 Maxwellton Road. In evaluating the application, the Commission will consider the exterior design of the proposed construction including its effect on neighboring properties' existing view, privacy, access to direct and indirect light and public safety. Your comments regarding the proposed construction and its effect on your property are welcome. You may submit comments in writing by completing this form and returning it to City Hall, 120 Vista Avenue, by 4:30 p.m. Thursday, August 8, 2019. If you wish, you may also attend the public hearing on the application and express any opinions you so desire.

Name (please print) Jack & Virginia Preston

Address 102 Maxwellton Road

Telephone Number (510) 428-9116

Did you review the plans or discuss the project with the applicant? Yes X No       

I/We support the application for design review: Yes        No X

**Comments: Overbuilding the Neighborhood**

The Planning Commission recently approved plans to construct a 4,000-square-foot residence at 89 Maxwellton. That residence, when completed, will be considerably larger than any other nearby home; dwarfing the homes on either side. This new application seeks to construct another 800-square-foot home at the rear of that property. This would be an additional two-bedroom, two-bath, detached residence. Taken together, this massive development will be anything but quaint; unlike the modest surrounding homes.

As we've noted previously to the commission, Maxwellton is narrow and winding. The street has no curbs, gutters, or sidewalks, and is poorly lit. Parking is forbidden on most of the street. One of the few "wide spots" for parking is directly in front of our home at 102. Visitors, tradesmen, and delivery drivers park there now. Sometimes for extended periods. But neighboring residents generally do not. That is important to us.

When we look out our front door, we see the street. We have the required setback. But still, the road is close. We hear the comings and goings of the people who walk there, park there, and we see their vehicles. We don't mind occasional visitors, but we fear we may never again have a time when someone isn't coming or going or parking in front of our house. Our view will no longer be the ivy-covered hillside across the street. Instead, we'll look directly at other people's vehicles; blocking our view, blocking our mailbox, and blocking our walkway. This will hurt our homelife, and will detract considerably from the curb appeal of our house.

We see no benefit to the neighborhood by adding this additional home. In fact, without consideration or provision for the impact caused by additional residents, the neighborhood will suffer. We wonder: Just because you *could* do something, *should* you? No other lot in the vicinity contains more than one residence. We're concerned approving this application may encourage others to build similar structures in an area where it just doesn't make sense. Each ADU will impact the surrounding residents, and will end up altering the tenor of an important neighborhood. Something the commission has heretofore made a staunch effort to preserve.

FYI: We opposed the original plans for 89 Maxwellton because we believed the proposed home was too large and included a complete second residence. The neighbors objected to the design, and the plans were ultimately rejected by the commission. Sometime later, the property owners visited our home and told us they had modified their plans, which no longer included a second residence. We still thought the house was too large, but absent the second residence, we did not object. Now, having secured approval to build their house, the owners are again seeking approval to build a second residence on the property. Bait-and-switch!

Signature  Date 8/8/2019

## RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OVERRULING PLANNING COMMISSION RESOLUTION 195-DR-19 AND APPROVING DESIGN REVIEW PERMIT APPLICATION NUMBER 19-0195 FOR A NEW ACCESSORY STRUCTURE ON THE PROPERTY LOCATED AT 89 MAXWELTON ROAD, SUBJECT TO CONDITIONS OF APPROVAL.

WHEREAS, the Property Owner is requesting permission to construct a 798-square-foot, single-story accessory structure and associated site changes pursuant to Section 17.38.070.B, located at 89 Maxwellton Road, which construction requires a design review permit; and,

WHEREAS, the Planning Commission considered the design review permit application during its regular meeting on August 12, 2019 and denied the application, finding that the project is not consistent with General Plan policies and programs, and that the proposal does not conform to the criteria and standards of Section 17.66.060 of the Piedmont City Code; and

WHEREAS, on August 21, 2019, the applicants and owners of the property at 89 Maxwellton Road, Joyce Tang and Keven Kwok, submitted an appeal of the Planning Commission's decision to deny the application for a new accessory structure, stating the grounds for appeal in accordance of the provisions in City Code division 17.78; and

WHEREAS, after reviewing the application, plans, staff report and any and all testimony, documentation and other evidence submitted in connection with such application; after reviewing the appeal documents submitted by the property owners of 89 Maxwellton Road; after reviewing the findings made by the Planning Commission to support its decision to deny the application; the Piedmont City Council finds:

- That the findings made by Planning Commission's as a basis for its decision to deny the application for design review permit are not supported by the weight of the evidence, and contain significant errors in the application of Chapter 17 of the Piedmont City Code and the Piedmont Design Guidelines, for the reasons set forth in the staff report;
- That the project is categorically exempt under the California Environmental Quality Act, pursuant to Section 15303, Class 3 (a) of the CEQA Guidelines because the project consists of an accessory structure to be constructed within a single-family zoning district and used as an accessory dwelling unit, because there are no unusual circumstances associated with the property or the project, because existing General Plan policies and programs are sufficient to address the proposed grading, excavation, and construction, and because there is no substantial evidence that any exception to the Class 3 Categorical Exemption applies to this project, specifically including the unusual circumstances exception;
- That the project is consistent with General Plan policies and programs; and
- That the proposal, as conditioned, conforms to the criteria and standards of Section 17.66.060 of the Piedmont City Code as follows:
  - A. The proposed design is consistent with the City's General Plan and Piedmont Design Guidelines in that the following building features are consistent with the architecture of the primary residence and neighborhood development: the wall material; the roof form, slope and materials; the window and door design, material and fenestration; and the

placement of the building mass on the site and within the terrain. The siting of the structure is visually integrated with the neighborhood and respects adjacent properties.

- B. The design has little or no effect on neighboring properties' existing views, privacy, and access to direct and indirect light because: the distance between the project and neighboring homes is appropriate; the topographical differences are appropriate to preserve privacy, views, and light; the view from neighboring properties is not a significant view as defined in City Code section 17.90.010; the height of the new structure has been kept as low as possible; and the project proposed adequate vegetative screening between properties.
- C. The proposed design does not adversely affect pedestrian or vehicular safety because: the project does not adversely affect visibility for entering or exiting the driveway; no changes to the public right-of-way are proposed; and the on-grade steps and their handrail provide safe access to the structure.
- D. The application is consistent with all relevant Design Review Guidelines, including the following: 3.03.01.1 (Significant Views), 3.03.02.1 to 3.03.02.3 (Visual and Acoustical Privacy, Access to Direct or Indirect Light), 3.11.03.1 to 3.11.03.14 (On Site Landscape Aesthetic and Environmental Design), 3.12.01.2 (Dark Sky Exterior Light Fixtures), and 3.12.02.1 to 3.12.02.4 (On-Site Lighting Design); 4.02.01.1 (Foundations), 4.02.01.5 to 4.02.01.7 (Stairs, Doors and Exterior Wall Material), 4.02.01.9 (Ornamentation on New Construction), 4.02.01.11 (Roof on New Construction), 4.03.04.1 to 4.03.04.7 (Windows in New Construction), 4.05.02.1 to 4.05.02.7 (Green Building On-Site Landscape Design Principles), and 4.05.03.1 to 4.05.03.4 (Green Building On-Site Building Design Principles); 5.01.01 (Neighborhood and Contiguous Parcel Compatibility) and 5.03.01.1 (Accessory Dwelling Unit Neighborhood and Contiguous Parcel Compatibility) and 5.03.02.1 (Accessory Dwelling Units On-Site Aesthetic Design Compatibility).
- E. The application is consistent with all relevant General Plan policies and programs, including the following: Natural Resources and Sustainability Element Policy 13.4 (Conserving Native Vegetation), Design and Preservation Element Policy 28.1 (Scale, Height, and Bulk Compatibility), Design and Preservation Element Policy 28.2 (Style Compatibility), Design and Preservation Element Policy 28.6 (Exterior Materials), Design and Preservation Element Policy 28.7 (Hillside Home Design), Design and Preservation Element Policy 28.8 (Acoustical and Visual Privacy), Design and Preservation Element Policy 29.2 (Landscape Design), Design and Preservation Element Policy 29.6 (Retaining Walls), Design and Preservation Element Policy 29.8 (Exterior Lighting), Land Use Element Policy 1.2 (Neighborhood Conservation), Housing Element Policy 1.6 (Second Units in New or Expanded Homes), and Housing Element Policy 6.7 (Water Conservation).

NOW, THEREFORE, BE IT RESOLVED, that based on the findings and facts set forth heretofore, the City Council overrules Planning Commission Resolution 195-DR-19 and approves the design review permit application number 19-0195 for the construction of an accessory structure and associated site changes at 89 Maxwellton Road, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

1. **Approved Plans.** Plans submitted for Building Permit must match plans dated received July 24, 2019, with plan sheet A1.0, site and landscape plan, submitted August 9, 2019, unless modified by the conditions of approval herein.
2. **Licensed Design Professional Required.** In conformance with the Architects Practice Act, Business and Professions Code section 5500 et seq., all plans, specifications, and other instruments of service submitted for review and approval of a building permit for the proposed construction project, must be prepared by or under the responsible control of, and stamped and signed by, a properly licensed design professional.
3. **Window and Door Material.** As specified in the plans, the building material for the new windows and doors shall be fiberglass, except for the wood front door and wood or aluminum garage door.
4. **Window Color Scheme.** All the windows on the house shall have a consistent color scheme.
5. **Window Recess.** All new windows shall be recessed 2 inches from the exterior wall to the face of window sash in order to maintain consistency, as required by the City's Design Guidelines and Window Replacement Policy. Window details shall be submitted for review and approval at the time of building permit application.
6. **Pre-construction Inspection.** Prior to the commencement of window fabrication, the installer shall schedule a pre-construction inspection with the Building Department to review the approved installation criteria, such as the window recess, window trim if any, and window sill projection if any.
7. **Roof Color.** The proposed roof shall be a non-reflective medium or dark color to minimize the visual impact on upslope properties.
8. **Exterior Lighting.** All new exterior light fixtures shall be downward directed with an opaque or translucent shade that completely covers the light bulb.
9. **C&D Compliance.** Compliance with Section 9.04 of the Municipal Code, which governs the recycling of construction and demolition debris, is required for all phases of this project.
10. **Building Height and Floor Level Verification.** Prior to foundation and/or frame inspection, the applicant shall provide the Building Official written verification by a licensed land surveyor stating that the floor level(s) and roof of the new structure(s) are constructed at the approved height(s) above grade.
11. **Setback from Property Line Verification.** Prior to foundation inspection, the applicant shall submit to the Building Official written verification by a licensed land surveyor stating that the construction is located at the setback dimension from the north, south, east, and west property line(s) as shown on the approved plans. The intent is to verify that the approved features are constructed at the approved dimension from the property line(s).
12. **Defense of Legal Challenges.** If there is a third party administrative, legal or equitable action challenging the project approvals, including CEQA issues, the Property Owner shall defend and indemnify the City against any liability, fees and costs arising out of the defense, including the costs of City's own counsel. If such an action is filed, the Property Owner and City shall then enter into an agreement regarding selection of counsel and other provisions related to the defense. For this purpose, "City" includes the City and its elected and appointed officials, agents, officers and employees.

13. **Final Landscape Plan.** Before issuance of a building permit, the Property Owner shall submit for staff review and approval a Final Landscape Plan that shows trees proposed for retention as well as in-lieu trees. The final plan shall comply with City Code Division 17.34 and Section 17.33.30, and shall not propose plants near the driveway that could obscure visibility of pedestrians on the sidewalk or vehicles on the street from drivers backing out of the driveway. All landscaping and exterior ornamental foliage shall comply with 14 CCR § 1299.03 prior to occupancy. Upon the determination of the Director, minor differences in the number, size and/or species of vegetation between those shown on the approved landscape plan and those installed at the time of final inspection that do not involve an increase in hardscape or structure coverage may be subject to staff review and approval. Significant differences between the vegetation installed at the time of final inspection and vegetation shown on the approved landscape plan are subject to a design review permit.
14. **Entry Path to Accessory Structure.** In order to provide adequate access for residents and emergency personnel, the entry path and steps from the street to the habitable accessory structure shall be constructed of concrete. The stairway and path shall meet the requirements of California Residential Building Code Section R311.7 and other applicable codes. In addition, the pathway shall be provided with low-voltage, downward-directed path lighting.
15. **Foundation/Shoring/Excavation Plan.** The Property Owner shall submit foundation, excavation, and shoring plans prepared by a licensed civil or structural engineer that fully address issues of site shoring, fencing and hillside security issues. The plans shall not require any trespassing or intruding into neighboring properties (without prior written consent), and shall mitigate against any subsidence or other damage to neighboring properties. Such plans shall incorporate as appropriate the recommendations of the Property Owner's geotechnical engineer and the City's geotechnical consultant, and shall be subject to approval by the City Engineer and the Chief Building Official.
16. **Geotechnical Report and Review.** At the option of the Building Official, the property owner shall submit a report prepared by a geotechnical engineer of the Property Owner's choice that fully assesses the existing site conditions, and addresses all issues regarding excavation and grading, foundations and their construction, drainage, retaining wall systems, periodic on-site observations, and other related items involving the Project.
  - a. Peer Review. The City, at the Property Owner's sole expense, shall retain an independent geotechnical consultant to perform a peer-review of the Property Owner's geotechnical report and advise the City in connection with the Property Owner's proposals. The City Engineer shall select this independent geotechnical consultant, whose services shall be provided for the sole benefit of the City and whose reports and recommendations can be relied upon only by the City. The independent geotechnical consultant shall also review the building plans during the permit approval process, and may provide periodic on-site observations during excavation and construction of the foundations as deemed necessary by the City Engineer. The Property Owner shall provide payment for this at the time of the Building Permit submittal.
17. **Blasting.** No blasting shall be allowed for any rock removal on this project.
18. **Double Trailer Truck Prohibition.** To reduce potential damage to the streets and to avoid traffic hazards on narrow curving city streets, no double trailers shall be used as part of the Project.



19. **Consultant Cost Recovery.** In order to accommodate the scope and nature of the Project proposed by the Property Owner, if the Director of Public Works deems it necessary to retain independent consultants with specialized expertise, including the City Engineer, the Property Owner shall make a cash deposit with the City at the time of the Building Permit Application in the amount of \$5,000 to be used to pay for the fees and expenses of such City consultants, or in any way otherwise required to be expended by the City for professional consultant assistance. If the cash deposit has been reduced to \$2,500 or less at any time, the Director of Public Works may require the Property Owner to deposit additional funds to cover any further estimated fees and expenses associated with consultants retained by the City on a regular basis or specifically for the Property Owner's Project. Any unexpended amounts shall be refunded to the Property Owner within 90 days after the Project has an approved Final Inspection by the Chief Building Official.
20. **Subsidence.** The Property Owner acknowledges and agrees that all work on the Project may be immediately stopped by the City in the event of any unanticipated landslides, subsidence, creep, erosion or other geologic instability, and may not resume until the City Engineer is fully assured that no further subsidence or erosion will occur. If in the opinion of the City Engineer, the instability poses a danger to public or private property, and Property Owner is not responding in a diligent manner, the Director of Public Works may use proceeds from the Site Safety Security required above to address the instability.
21. **Errors and Omissions Insurance.** Notwithstanding any other condition hereof, any Project Architect, Structural Engineer, Civil Engineer, Geotechnical Engineer or Shoring Engineer to be retained by the Applicant to perform work relating to project on Applicant's property shall be required to maintain errors and omissions insurance coverage with limits of no less than \$1,000,000.00 per claim that will specifically be available to cover any errors and/or omissions relating to any work performed by that professional involving Applicant's property.
22. **City Attorney Cost Recovery.** If there is a substantial additional commitment of City Attorney's time required to accommodate the scope and nature of the Project, the Property Owner shall, at the time of the Building Permit Application, make a cash deposit with the City in the amount of \$5,000 to be used to offset time and expenses of the City Attorney relating to the Project. If such cash deposit has been reduced to \$2,500.00 or less at any time, the Director of Public Works may require the Property Owner to deposit additional funds to cover any further estimated additional City Attorney time and expenses. Any unused amounts shall be refunded to the Property Owner within 90 days after the Project has an approved Final Inspection by the Chief Building Official.
23. **Construction Management Plan.** The Property Owner shall develop a comprehensive Construction Management Plan. The Construction Management Plan shall address noise, vibrations, traffic control, parking, debris removal, dust control, sanitary facilities, site safety security, emergency access, and other potential construction impacts, as well as other details involving the means and methods of completing the Project, including the construction route. The City Building Official has the authority to require modifications and amendments to the Construction Management Plan as deemed necessary throughout the course of the Project and until the Final Inspection.
  - a. Construction Site Control of Stormwater. The California Regional Water Quality Control Board requires all projects that disturb the site to comply with Provision C.6 of the San

Francisco Bay Regional Stormwater NPDES Permit in order to prevent construction site discharges of pollutants and other regulated materials during construction. As required by the Chief Building Official and prior to the issuance of a building permit, the Applicant shall develop and submit a construction stormwater management plan as part of the Construction Management Plan to achieve timely and effective compliance with Provision C.6. Permit Provision C.6.c.ii provides sources for site specific, and seasonally- and phase-appropriate, effective Best Management Practices (BMPs) that may be incorporated into the stormwater management plan. Copies of the Municipal Regional Stormwater Permit are available from the Piedmont Public Works Department and on-line at [cleanwaterprogram.org](http://cleanwaterprogram.org).

24. **Construction Completion Schedule.** Work on the Project, once begun, shall be promptly executed with continuous good faith and reasonable progress. Since timely completion of this Project is of the essence, the Property Owner shall submit for approval a Construction Completion Schedule, which will specify, in detail, the duration and percentage of the project as a whole for each phase.
- a. The Construction Completion Schedule with associated construction values for each benchmark shall set forth completion dates for the following benchmarks as needed: i) Completion of Excavation; ii) Completion of Retaining Walls; iii) Completion of Foundation; iv) Completion of Rough Framing; v) Completion of Electrical; vi) Completion of Plumbing; vii) Completion of Mechanical; viii) Completion of Fire Sprinklers; ix) Completion of Home; x) Completion of Hardscaping and Landscaping; and any further construction benchmarks and conditions of occupancy as may be determined by the Director of Public Works.
  - b. Before the Project begins, the Director of Public Works shall make a determination as to the reasonableness of the proposed completion dates applicable to the Project, and that determination shall constitute the Approved Construction Completion Schedule and be binding on the Property Owner. The City may, at the Property Owner's sole cost, engage the services of a consultant to review the proposed Construction Completion Schedule and, to the extent the period allocated for any work appears unjustifiable, recommend to the Director of Public Works a reasonable completion date for any benchmark.
  - c. In the event of a change in scope of the Project that would alter the benchmarks dates set forth in the Approved Construction Completion Schedule, or in the event the Property Owner fails to meet a benchmark set forth in the Approved Construction Completion Schedule, the Property Owner shall immediately submit a request to amend the Approved Construction Completion Schedule to the Director of Public Works. The request to amend shall be accompanied by a new proposed Construction Completion Schedule in compliance with subsection (a) of this condition of approval and the Director of Public Works shall evaluate the proposed amendments to the Approved Construction Completion Schedule in accordance with subsection (b) of this condition of approval.
  - d. The failure of the Property Owner to comply with the Approved Construction Completion Schedule, or any amendments to it approved in conformance with subsection (d) of this condition of approval, shall constitute a nuisance under the City of Piedmont City Code ("City Code"). The failure of the Property Owner to comply with the Approved Construction Completion Schedule may result in the City pursuing administrative citations pursuant to Chapter 1 of the City Code, nuisance abatement

pursuant to Chapter 6 of the City Code, or any other remedy available to the City under the law. Additionally, if the Property Owner fails to comply with the Approved Construction Completion Schedule, the Director of Public Works, at his or her sole discretion, may make a claim against the Property Owner's Site Security, if one is required, in order to complete the benchmark. The Director of Public Works, at his or her sole discretion, may refer the application to the Planning Commission for public review and direction.

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