

PIEDMONT CITY COUNCIL

Regular Meeting Minutes for Monday, April 1, 2024

A Regular Session of the Piedmont City Council in the City Hall Council Chambers, 120 Vista Avenue, was held on April 1, 2024. In accordance with Government Code Section 54954.2, the agenda for this meeting was posted for public inspection on March 28, 2024.

CALL TO ORDER Mayor Cavanaugh called the Regular Session meeting to order at 6:00 p.m. with the Pledge of Allegiance.

ROLL CALL Present: Mayor Jennifer Cavanaugh, Vice Mayor Betsy Smegal Andersen, and Councilmembers Jennifer Long, Conna McCarthy, and Tom Ramsey

Staff Present: City Administrator Rosanna Bayon Moore, City Attorney Michelle Marchetta Kenyon, Fire Chief Dave Brannigan, Planning and Building Director Kevin Jackson, Recreation Director Chelle Putzer, Public Works Director Daniel Gonzales, Police Chief Jeremy Bowers, and City Clerk Anna Brown

PUBLIC FORUM There was no **Public Comment** received.

CEREMONIAL MATTERS Mayor Cavanaugh presented Piedmont volunteers with a proclamation of commencement and acknowledged individuals by committee.

Present:
Budget Advisory & Financial Planning Committee – Vanessa L. Washington
CIP Review Committee – Sharon Shoshani
Planning Commission – Douglas Strout
Public Safety Committee - Jeff Horner
Recreation Commission – Susan Terrill

Absent:
CIP Review Committee – Chris Chan, Michael Henn, and John Lenahan
Civil Service Commission – Amy Kelly
Police and Fire Pension – Robert Dickinson

Recreation Director Chelle Putzer and Akil Danjuma presented the Betty C. Howard Award for 2023 to Carolyn Yang Stewart for outstanding volunteer and Maddison “Maddie” Mills for outstanding staff.

Police Chief Jeremy Bowers recognized and pinned Police Officer Jehan Liles and Police Sergeant David Cutler who were then sworn in by City Clerk Anna Brown.

CONSENT CALENDAR The Consent Calendar consisted of the following items:

Minutes Approval of City Council Minutes for 3/18/2024 and 3/25/2024

Designating City Agents for the Local Hazard Mitigation Plan Grant Funds Approval of a Resolution Designating the City Administrator and Finance Director as the City’s Agents for Local Hazard Mitigation Plan Grant Funds (0525)

Approving a Deed Restriction on Piedmont Park to Replace the Pedestrian Bridge Approval of a Resolution Approving a Deed Restriction on Piedmont Park to Meet Proposition 68 Grant Requirement for the Replacement of the Pedestrian Bridge (0390)

Disaster Preparedness Consulting Services Approval of an Agreement with Tamarack Management for Disaster Preparedness Consulting Services for a Total Contact Amount of \$149,665 and Authorization of the City Administrator to Execute Related Contract Documents (0045)

Letter of Support for Assembly Bill 2346 Approval of the Submission of a Letter of Support to the California Legislature for Assembly Bill 2346 (0610)

There was no **Public Comment** received.

Resolution 17-2024

RESOLVED, that the City Council approves the Consent Calendar as presented.

Moved by Andersen, Seconded by McCarthy

Ayes: Andersen, Cavanaugh, Long, McCarthy, Ramsey

Noes: None

Abstain: None

REGULAR AGENDA

The Council considered the following items of regular business:

Two Appeals for a New Single-Family Residence Consideration of Two Appeals of the Planning Commission's Decision to Conditionally Approve a Design Review Permit Application to Construct a New Single-Family Residence at 139 Lexford Road (Application DRPC2023-018)

Planning and Building Director Kevin Jackson reviewed the application and project description, Planning Commission's actions, determinations, and conditions of approval, community concerns and requests, and standards for reviewing an appeal as per City Code Section 17.78.040.

Assistant Planner Joshua Muller presented the two appeals and the City's responses.

City Engineer John Wanger reviewed his credentials and addressed the claims by the appellant including the depth to bedrock and hardness, steepness of the slope, landslides, grading requirements, and safety during construction.

Planning Commission Vice Chair Justin Zucker was in attendance.

Public Comment was received from:

Kirk Peterson, Douglas Higashi, Bonnie Wang, Timothy Kahn, Chirstopher Van Gundy, Stuart Block, Anuraag Kansal, Juelle Frechette, Sven Khatri, Denae Budde of Donahue Fitzgerald, LLP, and Poppy Crum noted challenges with the project and expressed concern for the process, steep slope, impact to the City in a dispute, \$15,000 for completion, noise impacts from construction, hillside slides, the City's inconsistency in imposing conditions, three protections being removed, excavation risks, protections

for the volume of excavation and risks and gaps in the protections, safety, elevated risks to complete the project, project proximity, privacy, landscaping, prescriptive easement, and raised objection to changes to make the project easier to construct that burden the neighbors.

Eileen Mulligan -White, Robert White, Michael Gardner, Samantha Nobles-Block, Reza Bazargani, Feng Pan, and Richard Wang requested the City include the special financial security obligations found in the previous approvals, thought the project does not qualify for a notice of exemption under CEQA, questioned the credentials and previous work of the contractor, requested reinstating the projections, and suggested protection approaches. Furthermore, they asked the Council to consider the safety and stability of homes surrounding the site, putting the limitations back and allowing the project to be properly bonded to protect surrounding homeowners, take concerns expressed by the community into consideration, and keep City away from liability risks.

Gene St. Onge, the structural engineer for the project at 139 Lexford Road, expressed confidence the project can be built safely.

Shari Fujii supported the development.

Willis Yu, owner of 139 Lexford Road, explained the building process of the site and agreed to the conditions.

Mr. Wanger noted comparable projects for the slope and grading and use of a hoe ram and the opportunity to craft a new condition to address site security that requires a grading bond.

The Council deliberated at length and staff addressed concerns and plans to address and monitor construction noise and vibration, neighboring property inspections, the site safety security, and the Grading Bond. Draft Condition 37 pertaining to construction hours and excavation terms, the grading bond draft condition, and the blasting condition were read into the record. An addition to the conditions required a neighboring property inspection prior to a building permit issuance.

Resolution 18-2024

WHEREAS, on October 2, 2023, Willis Yu (“Applicant”) applied for a design review permit that proposed to construct a new 4,573-square-foot single-family residence on an existing vacant lot in Zone A (Single-Family Residential). The new Mediterranean style residence is proposed to be four levels terraced up the hillside and contain three bedrooms, two bathrooms, a half bath, dining room, kitchen, family room, office, laundry room, elevator, and conforming two-car garage. A front terrace is proposed at the upper level, and patios are proposed at the rear of the house. A proposed landscape plan has been submitted with retaining walls, stairs, walkways, and exterior lighting. (the “Project”); and

WHEREAS, on January 8, 2024, the Planning Commission held a public hearing to consider the Project, reviewed written comments from the public, received oral comments from the public, discussed the matter, and at the conclusion of the public hearing, the Planning Commission conditionally approved the Project, finding that the Project is categorically exempt from CEQA per Sections 15303 (a) and 15304 and that none of the exceptions to the exemptions apply, and that the project is consistent with the City’s

General Plan and Piedmont Design Guidelines and Standards; and

WHEREAS, on January 18, 2024, Douglas A. Crosby, on behalf of Sven Khatri and Poppy Crum of 145 Lexford Road (“Appellant A”) and Christopher Van Gundy and Stuart Block (“Appellant B”) of 132 Lexford Road appealed the Planning Commission decision in accordance with Division 17.78, Appeals; Calls for review, of the Piedmont City Code (“Appeal”); and

WHEREAS, on March 18, 2024, a 14-day public notice was duly given to the Applicants, the Appellant, the surrounding property owners notified in the original application hearing, and to any other person requesting notice, in accordance with Section 17.78.030 and Section 17.66.050 of the City Code; and

WHEREAS, based upon all of the evidence in the record and after reviewing the application, plans and any and all oral or written testimony and documentation submitted in connection with the Project, the Piedmont City Council denies the appeal and upholds the findings rendered by the Planning Commission to conditionally approve the application for designs review permit, and finds that the Planning Commission’s decision is supported by the weight of the evidence.

WHEREAS, the City Council of the City of Piedmont finds that: the Project complies with the design review criteria set forth in Section 17.66.060 of the Piedmont City Code for the following reasons:

1. The proposed design is consistent with the City’s General Plan and Piedmont Design Guidelines. The following building features are consistent with the original architecture and neighborhood development including the wall material, the building articulation, the roof form, the roof material, stepping of the building into the slope, the window and door material, the fenestration pattern, the eave overhang design and dimension, the guardrail material, and the relationship of the proposed residence to the site, to existing topography, and to neighboring residences including the locations of driveways.
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 view is not a significant view. There is sufficient vegetative screening. The topographical differences are appropriate to preserve privacy, views and light as exemplified by the slope and trees. The height of the project has been kept as low as possible and tucks into the slope wherever possible.
3. The proposed design does not adversely affect pedestrian or vehicular safety because the project maintains adequate visibility for entering and exiting the driveway and adjacent driveways are common in Piedmont. The new handrails and on-grade steps should facilitate pedestrian safety. The separation between the proposed driveway and the pedestrian path of travel on the property and in the public right-of-way is safe and appropriate because the project includes both the construction of a sidewalk along the frontage on Lexford Road and pedestrian access that is distinct from the garage access.

4. As conditioned, the application complies with the following Design Review Guidelines and General Plan policies and programs: Site Design 3.03, 3.05, 3.08, 3.09, 3.11, 3.12, 3.13, Building Design: General 4.01, 4.02, 4.03, 4.04, 4.05, and Design: Single Family Residential 5.01, 5.02, 5.04.

5. The project is consistent with General Plan policies and programs, including the land use element, housing element, and design and preservation element, including: Design and Preservation Element Policy 18.4 (Soil and Geologic Reports), Design and Preservation Element Policy 22.1 (Noise Insulation for New Development), Design and Preservation Element Policy 22.2 (Noise Reduction Measures), Design and Preservation Element Policy 28.1 (Scale, Height, and Bulk Compatibility), Design and Preservation Element Policy 28.2 (Style Compatibility), Design and Preservation Element Policy 28.4 (Setback Consistency), Design and Preservation Element Policy 28.5 (Garages, Decks, and Porches), Design and Preservation Element Policy 28.6 (Exterior Materials), Design and Preservation Element Policy 28.7 (Hillside Home Design), Design and Preservation Element Policy 28.8 (Acoustical and Visual Privacy), Design and Preservation Policy 28.12 (Creativity and Innovation), Design and Preservation Element Policy 29.1 (Conserving Residential Yards), Design and Preservation Element Policy 29.2 (Landscape Design), Design and Preservation Element Policy 29.3 (Front Yard Enclosures), Design and Preservation Element Policy 29.4 (Maintaining Privacy), 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), Design and Preservation Element Policy 29.8 (Exterior Lighting), and Design and Preservation Element Policy 29.9 (Sight Obstructions).

NOW, THEREFORE, BE IT RESOLVED that the Piedmont City Council does hereby resolve, declare, determine, and order as follows:

SECTION 1. The above recitals are correct and that the Piedmont City Council finds that the Appellants have not met the burden of proof that errors were made by Planning Commission or Planning & Building Department staff, pursuant to Section 17.78.040(A)(2) of the Piedmont City Code and have not met their burden to demonstrate that the Planning Commission's findings made as a basis for its action were not supported by the weight of the evidence.

SECTION 2. The City Council denies the appeals and upholds the Planning Commission's conditional approval of the Design Review Permit application to construct a new 4,573-square-foot single-family residence on an existing vacant lot in Zone A (Single-Family Residential). The new Mediterranean style residence is proposed to be four levels terraced up the hillside and contain three bedrooms, two bathrooms, a half bath, dining room, kitchen, family room, office, laundry room, elevator, and conforming two-car garage. A front terrace is proposed at the upper level, and patios are proposed at the rear of the house. A proposed landscape plan has been submitted with retaining walls, stairs, walkways, and exterior lighting.

SECTION 3. The City Council finds that the Project is exempt from the California Environmental Quality Act pursuant to CEQA Guidelines section

15303 and 15304. Section 15303 (a) of the California Environmental Quality Act guidelines (“Small Structure Exemption”) explicitly provides for a categorical exemption for the “construction and location of limited numbers of new, small facilities or structures,” and cites “[o]ne single-family residence, or a second dwelling unit in a residential zone” as an example of an exempt project under Section 15303. The exemption covers up to 6 dwelling units in urbanized areas. The application proposes a single-family residence in Zone A, which is one of Piedmont’s residential zones. Section 15304 (b) of the California Environmental Quality Act guidelines explicitly provides for a categorical exemption for “new gardening or landscaping, including the replacement of existing conventional landscaping with water efficient or fire-resistant landscaping”. The project proposes installing new landscaping throughout the site. Additionally, the Council finds that there are no unusual circumstances, including because the characteristics of the project as a single-family residence, proposed for a sloped lot, requiring grading and excavation activities, where the lot features hard bedrock at a level of 6 feet or of a shallower dept. Such conditions are not unusual, as demonstrated by the characteristics and history of multiple properties throughout Piedmont, including 43-47 Bellevue Avenue, 67 Glen Alpine Road, 89 Maxwellton Road, 40 Crocker Avenue, 519 Hampton Road, and 183 Somerset Road. This finding is based on substantial evidence, and in making this finding the City Council incorporates all staff reports, public comments, and any documentary evidence by reference.

SECTION 4. The City Council adds four conditions to the approval of the project and modifies one of the conditions applied by the Planning Commission.

New Conditions:

30. Neighboring Property Inspection. Provided that the property owners consent to an inspection, which consent shall not be unreasonably withheld, a licensed civil or structural engineer (chosen and paid for by the Property Owners) shall inspect neighboring homes and retaining walls at 135 Lexford Road, 140 Lexford Road, 145 Lexford Road, 87 Huntleigh Road, 130 Somerset Road, 140 Somerset Road, and 150 Somerset Road (“Neighboring Properties”) 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.) The licensed civil or structural engineer selected by the Property Owners may provide the report to the City that includes findings/conclusions, and the City may use the report to inform the review of the Applicant’s Construction Management Plan. If other independent consultants or specialists are required by the City to review plans, they shall be retained at the Property Owner’s cost. In the event that that a Neighboring Property fails to consent to a property inspection, the Property Owner shall be deemed to have satisfied their inspection obligations as to the non-consenting Property Owner.
31. Blasting. No blasting shall be allowed for any rock removal on this project.
32. Grading Bond. Prior to issuance of a building permit the applicant shall post a Grading Bond, the amount of which shall be determined by City staff

in reviewing the proposed plans, ensuring restoration of site grades if the project is abandoned.

33. Construction Hours During Excavation. In order to mitigate the sound and construction impacts of the excavation phase of the project, no excavation shall occur on weekends, unless permission is granted by the Chief Building Official, in consultation with the City Engineer, to accommodate specific, extenuating circumstances, such as the delivery of equipment, materials, or to comply with the Construction management Plan or the Construction Completion Schedule. A written request shall be submitted to the Chief Building Official, citing a specific component of the Construction Management Plan or Construction Completion Schedule in order to be granted this request.

Modified Condition:

22. 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 ~~\$15,000~~ \$100,000 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 Planning & Building, 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 Planning & Building. 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 Planning & Building's 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.

SECTION 5. The Planning and Building Director is the custodian of documents and other materials that were considered by the City Council and constitute the record of proceedings on which this decision was based. The

records are located at the Planning & Building Department, 120 Vista Avenue, Piedmont, CA 94611.

SECTION 6. All portions of this resolution are severable. If an individual component of this Resolution is adjudged by a court to be invalid and unenforceable, then the remaining portions will continue in effect.

Moved by Ramsey, Seconded by Long
Ayes: Andersen, Cavanaugh, Long, McCarthy, Ramsey
Noes: None
Absent: None
(0080-0770)

REPORTS AND ANNOUNCEMENTS

Councilmember McCarthy announced that the Crocker Park Americans with Disabilities Act (ADA) path improvements will begin in April, selection of an Island Oak tree to replace a tree in Bellevue Mountain Island, Linda Park Off Leash area has reopened, Dracaena ADA ramp is open, Heritage Tree nominations will be announced on April 3 at the Park Commission meeting, and Arbor and Earth Day celebrations will take place on April 26.

Vice Mayor Andersen announced the Food Fest on April 20 in Piedmont Park.

Councilmember Ramsey announced the Piedmont Put-put and Picnic in the Park on April 21, last call for Piedmont Recreation Department (PRD) spring break camp enrollment and Play Like a Girl event on May 5.

ADJOURNMENT

With no further business, Mayor Cavanaugh adjourned the meeting at 9:16 p.m. in memory of community member, Jim Cramer.