

City of Piedmont
COUNCIL AGENDA REPORT

DATE: April 1, 2024

TO: Mayor and Council

FROM: Rosanna Bayon Moore, City Administrator

SUBJECT: 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)

RECOMMENDATION

By a single motion, take the following actions:

1. Deny the appeals (Attachments B and C)
2. Uphold the Planning Commission's decision of a design review permit conditional approval,
3. Adopt the attached resolution (Attachment A.).

EXECUTIVE SUMMARY

Douglas A. Crosby, on behalf of Sven Khatri and Poppy Crum of 145 Lexford Road ("Appellant A") has appealed the January 8, 2024 decision of the Planning Commission to conditionally approve the application for the construction of a new single-family residence at 139 Lexford Road. The appeal, submitted on January 18, 2024, asserts that the findings made by the Planning Commission as a basis for its action are not supported by the weight of the evidence.

Christopher Van Gundy, Samantha Noble-Block, and Stuart Block ("Appellant B") of 132 Lexford Road have also appealed the January 8, 2024 decision of the Planning Commission to conditionally approve the application for the construction of a new single-family residence at 139 Lexford Road. The appeal, submitted by Appellant B on January 18, 2024, asserts that the findings made by the Planning Commission as a basis for its action are not supported by the weight of the evidence.

As explained in further detail in the staff report, Staff recommends that the City Council deny the appeals, and uphold the action taken by the Planning Commission.

BACKGROUND

The two appeals are in response to the January 8, 2024 Planning Commission decision to conditionally approve an application for design review permit submitted by the Property Owners ("Applicants") of 139 Lexford Road. The application proposes 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.

Because the application met the criteria of Piedmont City Code section 17.66.040(A)(1)(b), the application was subject to review by the Planning Commission.

The application was approved by the Planning Commission on January 8, 2024, subject to 29 conditions of approval. The appeals by Appellants A and B were filed on January 18, 2024.

Subject Property and Application Description

The existing property is unimproved and slopes upward from the street. A City-owned sewer line and easement cross the property and abut the east (right) property line bordering 145 Lexford Road. To address the topographic conditions of the lot, the house is proposed to be stepped into the hillside. The house is proposed to be 4,537-square feet on four levels (which includes the garage level). As the house rises, each level of the house is stepped further back on the hillside from the level below it.

A conforming two-car garage is proposed at the right side of the property, with an upwardly sloped driveway that meets the City's maximum 20% slope requirement pursuant to Chapter 3.07.05 of the Piedmont Design Guidelines and Standards. The applicant proposes to excavate the right front portion of the hillside to accommodate the driveway, garage, and part of the office proposed atop the garage. The house has two wings connected by an elevator tower that provides access to all levels, including the garage.

Stylistically, the house has many "Mediterranean" characteristics. The proposed house would have integral color stucco wall surfaces, a ceramic tile roof, bronze anodized aluminum sash windows, metal railings, copper gutters and downspouts, and mechanically operated wooden garage doors.

The proposed landscape plan includes a mix of trees, shrubs, smaller plants and ground covers. It proposes to preserve several existing oak trees in the upper left corner, and several eucalyptus trees at the upper right corner adjacent to 145 Lexford Road. Several new oak trees are proposed at the front of the property.

APPLICATION HISTORY:

Multiple applications to construct a new single-family residence at this property have been submitted to the City, and a chronology of these previous applications is included with the Planning Commission staff report.

COMMISSION DELIBERATIONS AND ACTION:

The Planning Commission considered the application at their regularly scheduled meeting on January 8, 2024. The Planning Commissioners reviewed the application materials, the staff report and the written comments submitted by members of the public (see agenda report page 12 for hyperlinks to these documents). The Commissioners also made site visits to the Applicant's property. At the Planning Commission hearing, the majority of oral public comments related to concerns regarding the construction phase of the project. Community members generally stated that although they are supportive of the project, the prospect of a new family in the neighborhood and the overall design and aesthetic qualities of the proposed residence, the concerns they have

regarding the construction of the project pertain to the geotechnical characteristics of the hillside. Therefore, their comments were focused on requesting additional protections for neighboring properties, and certain conditions of approval for the project.

The Commission determined that the Project was categorically exempt from the California Environmental Quality Act (“CEQA”) under Sections 15303 and 15304 of the CEQA guidelines and found that the project met the standards for approval. As noted in the meeting minutes, the Commission found that none of the comments received were opposed to the design of the residence, and that evidence had been provided from multiple geotechnical engineers that indicated the site is viable for development. The January 8, 2024, meeting minutes are provided via a hyperlink on page 12 of this agenda report.

Design Review Findings

The Commission determined that the project complies with the design review criteria set forth in Section 17.66.060 of the Piedmont City Code with the following findings:

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).

Copies of the [City of Piedmont Design Guidelines and Standards](#) and the [City of Piedmont General Plan](#) are provided on the City's website.

DISCUSSION

This section details the requirements for considering appeals and analyzes the Appellants' bases for appeal.

A. Appeal Criteria

Section 17.78.040 of Piedmont's City Code sets forth the standards of review for an appeal as follows:

- A. General. An appeal is not a de novo hearing, but instead will be governed by the following principles:
 1. Deference. Due deference shall be given to the actions of the Planning Commission in light of the substantial number of planning applications heard by them and the major accumulated group experience that those actions represent.
 2. 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 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 makers are discovered after the hearing, which were a basis of the decision.
 3. Burden of proof. During an appeal, the burden of proof is on the Appellant.

B. Analysis of Appeal by Douglas A. Crosby representing the owners of 145 Lexford Road ("Appellant A")

Appeal Form and Statement

Attached as Attachment B is a copy of the Appellant A's original appeal form and statement filed on January 18, 2024, stating the reasons for the appeal.

Staff Analysis of Appeal

Appeal Basis #1: The Planning Commission's decision erred in concluding that the side yard setback on the east boundary of the 139 Property meets the required 5 feet minimum.

Staff's Analysis: Appellant misconstrues the City of Piedmont's definition and application of the term "setback".

Appellant contends that the 5-foot minimum setback is not met because there is a prescriptive easement, and the 5-foot setback must be calculated from the easement. However, this is incorrect. Per Section 17.90.020 of the Piedmont City Code, a setback is defined as "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." This definition does not make a distinction regarding the presence of an easement, nor does it mention the term "easement." Applying the definition of "setback" in the City code requires that the side-yard setback for Zone A, as defined in Section 17.20.040, is measured five feet away from the property line. Based on staff's review, the project complies with the 5-foot setback requirement.

Additionally, per the topographical survey prepared by Moran Engineering on October 5, 2023, the entirety of the 5-foot sewer easement is located on the applicant's property. Condition 12 requires prior to the foundation inspection taking place, the applicant to submit to the Building Official written verification by a licensed land surveyor stating that the construction is located at the setback dimension from all of the property lines as shown on the approved plans. Any dispute regarding the nature of the easement and any uses occurring within the easement (i.e. if there are any "prescriptive" components afforded to the appellant's property) is a private land-use matter that is not within the purview of the City.

Appeal Basis #2: The Planning Commission erred in addressing only the eucalyptus tree along the east boundary line in its conditions of approval.

Staff's analysis: Appellant mistakes the wording of Condition 18 regarding tree protection.

Appellant contends that Condition of Approval No. 18 fails to take into account other trees located along the east property line, where there are at least 10 trees. However, Appellant's condition reference is incorrect: Condition 18 requires an arborist's report and certified tree preservation plan "that includes tree preservation measures to preserve the existing Oak trees in the upper left portion of the property and the Eucalyptus trees along the east property line." The condition applies to the entirety of the Eucalyptus specimens along the east property line, not any one specific tree. The condition as written clearly addresses Appellant A's concerns regarding preserving the health of the most prominent trees and taking proper measures to do so. Regarding the smaller trees and shrubs, such as existing maple, juniper, and bamboo, any removal and replacement of these is covered by the Final Landscape Plan condition, which states proposed landscaping is reviewed by staff to ensure that it complies with the approval criteria for the application, especially the design review findings made by the Planning Commission.

Additionally, it is important to note that the Eucalyptus trees in question are located on the applicant's property. The City's Design Guidelines and Standards do not consider the view of trees from a neighboring property to be a significant view that is subject to protections and any visual impacts from a proposed tree removal would not be subject to the required findings of a design review permit. Furthermore, in the event of a tree removal, the condition requiring the planting of in-lieu trees requires the proposed trees to be called out on the Final Landscape Plan, which is subject to staff approval per condition 17. There is no requirement that the in-lieu trees be planted

on an opposite side of the lot, and no requirement that inhibits the ability to plant in-lieu trees in the vicinity of the east property line. The Final Landscape Plan condition also requires a staff review to ensure that any proposed landscaping does not compromise privacy or create new privacy impacts through the modification of the existing landscape.

Appeal Basis #3: The Planning Commission's decision erred in failing to acknowledge the potential damage the 145 Owners will experience as a result of construction and grading so close to the driveway on the 145 Property.

Staff's analysis: This basis of appeal disregards the conditions of approval that the Planning Commission placed on the application to ensure the safety of the surrounding properties.

Appellants contend that the steep slope and significant excavation would deprive the neighboring properties of lateral and subjacent support. However, geotechnical reports provided by the applicant indicate that the rock present has engineering characteristics which make it an excellent medium for foundation support. Additionally, the reports and resources from State and Federal geological surveys indicate that the rock composition on 139 Lexford is the same as 145 Lexford and the surrounding neighborhood.

Additionally, the Planning Commission placed 29 conditions of approval on the application in order to address potential factors and variables during the permitting and construction phases of the project. Specifically, the following conditions of approval address the engineering and construction phases that could have a potential impact on the 145 Lexford Property:

- **Condition 7. Contractor's General Liability Insurance.** Requires \$2 million per occurrence for damages to City property or to neighboring property.
- **Condition 8. Modifications to Conditions.** Authorizes the Planning & Building Director to modify conditions 7, 22, and 25 (e.g., to increase insurance or security amounts).
- **Condition 12. Setback from Property Line Verification.** Requires licensed surveyor verification that construction is at the approved dimension from the property line.
- **Condition 16. Stormwater Design.** Alerts the applicant that the project must incorporate site design measures as required by Provision C.3.i of the Municipal Regional Stormwater NPDES Permit.
- **Condition 19. Foundation/Shoring/Excavation Plan.** Alerts the applicant that the building permit application must include foundation, excavation, shoring plans prepared by a licensed engineer, which will be reviewed by the City Engineer.
- **Condition 20. Geotechnical Report and Review (with Peer Review).** Alerts the applicant that the building permit application must include a report by a geotechnical engineer assessing site conditions and recommending construction methods, which will be peer reviewed.
- **Condition 21. Sound and Vibration Mitigation Plan and Review (with Peer Review).** Alerts the applicant that the building permit application must include a plan prepared by a licensed engineer to mitigate and monitor vibration and decibel levels during construction, which will be peer reviewed.
- **Condition 25. Site Safety Security.** Requires a security of \$15,000 to make the site safe in the event that construction is unfinished.
- **Condition 26. Subsidence.** Alerts the applicant that should geologic instability occur during construction the project may be stopped until stabilized to the satisfaction of the City Engineer.
- **Condition 27. Construction Management Plan.** Alerts the applicant that the building permit application must include a comprehensive plan to manage and complete construction.
- **Condition 28. Construction Completion Schedule.** Alerts the applicant that the building permit application must include a plan for the completion of construction benchmarks, and

sets procedures for modifications and enforcement.

Moreover, City Code Section 17.06.010 explicitly states that on-site improvements not covered by [Chapter 17 of the Piedmont City Code], such foundation or below-grade work or any other construction work not requiring design review, are subject to the requirements of Piedmont City Code chapter 8 Building, Construction and Fire Prevention. Per City Code Section 17.80.030, the Chief Building Official is responsible for enforcing the City Code regarding the erection, construction, reconstruction, moving, conversion, alteration, or addition to a building or structure. Furthermore, Section 17.06.030 specifically requires the Chief Building Official to withhold issuing a building permit for the construction, alteration, or establishment of an improvement or use within the city contrary to [Chapter 17 of the Piedmont City Code].

With respect to engineering reviews and oversight, as part of processing the building permit, the Building Official typically relies on the City Engineer to review the portion of the building plans associated with site grading, drainage and utilities. In the review, the City Engineer reviews the plans, soils report, drainage facilities and calculations and all site utilities to ensure that they meet code, as well as that the grading takes into account recommendations as outlined in the soils report, including grading, site slope stabilization, recommended shoring, proposed cuts and fills, and proposed mitigation. Once the City Engineer is satisfied that the plans are acceptable, the City Engineer will notify the Building Official that the site grading, drainage and utilities plans are acceptable and ready for approval. During construction, the City Engineer or his designee will assist the Building Department in reviewing grading operations and utilities to ensure that construction is taking place in accordance with the approved plans. If site safety is a concern, the contractor, Building Official, City Engineer and Geotechnical Engineer will be immediately notified of any concerns and those concerns will need to be immediately addressed by the contractor.

C. Analysis of Appeal by Christopher Van Gundy, 132 Lexford Road (“Appellant B”)

Appeal Form and Statement

Attached as Attachment C is a copy of the Appellant B’s original appeal form and statement filed on January 18, 2024, stating the reasons for the appeal.

Staff Analysis of Appeal

Appeal Basis #1: The Planning Commission’s decision to remove critical financial security obligations for the Project that have been in place since at least 2007 is unsupported by evidence that puts that community and the City at risk.

Staff analysis: Appellant disregards numerous applications approved by the Planning Commission since 2017 without the referenced financial security obligations.

Appellant requests the following conditions:

1. A neighboring property inspection prior to construction to establish baseline conditions for neighboring structures and foundations.
2. A neighboring property damage security bond of \$3,000,000.
3. A site safety and security bond/performance bond of \$200,000.
4. A city facilities security bond of \$350,000.

However, based on Staff's review, the conditions Appellant requests are not required to be imposed. Since the prior project approvals, the City has approved multiple projects with similar scopes that did not include the cited conditions:

- **43-47 Bellevue Avenue:** Significant site grading across a large, sloped parcel.
- **89 Maxwellton Avenue:** Construction of a new single-family residence and garage on a vacant lot.
- **40 Crocker Avenue:** Significant site grading to accommodate a new two-story garage in the street-yard setback.

All of these projects did not have conditions requiring financial instruments to address adjacent private properties.

Additionally, the Conditions of Approval imposed by the Planning Commission do require significant financial obligations.

As background, Section 17.64.030 allows the reviewing body to impose reasonable conditions on a project to do the following:

1. Achieve the general purposes of this chapter or the specific purposes of the zoning district in which the site is located, or to make it consistent with the General Plan and Piedmont Design Standards and Guidelines;
2. Protect the public health, safety, and general welfare; or
3. Ensure operation and maintenance of the use in a manner compatible with existing and potential uses on adjoining properties or in the surrounding area.

Additionally, this section allows, though does not require, the review body to impose a condition of approval requiring a guarantee (in the form of a bond, cash deposit, letter of credit or other guarantee) that specified conditions of approval will be met.

In approving this application, the Planning Commission placed the following conditions on the project:

- **Condition 7. Contractor's General Liability Insurance.** Requires \$2 million per occurrence for damages to City property or to neighboring property.
- **Condition 22. City Facilities Security.** Requires a security of \$100,000 as an initial sum to cover the cost to repair damage to City property (e.g., sidewalks, roadways) damaged by construction activity.
- **Condition 25. Site Safety Security.** Requires a security of \$15,000 to make the site safe in the event that construction is unfinished.

The dollar amount required for the Contractor's General Liability Insurance, City Facilities Security and the Site Safety Security were determined in consultation with the Public Works Director and City Engineer in recognition that these are base amounts and can be increased per Condition #8. The Site Safety Security was determined sufficient to erect a fence to enclose and secure the site, and to install minor protections to any structures. The City Facilities Security was determined sufficient to cover the cost of minor repairs to the sidewalk in front of the site and to the roadway along the route between the site and the City border at Estates Drive and Park Boulevard. The table below provides information on other recent projects for new construction, additions or major remodels.

Project Site	Year	Gen. Liability Ins.	Site Safety Security	City Facilities Security
55 Glen Alpine Rd.	2023	\$2,000,000	Not required	Not required
58 York Dr.	2022	Not required	Not required	Not required
89 Sea View Ave	2021	\$1,000,000	Not required	\$25,000
87 Sea View Ave	2020	\$2,000,000	Not required	\$25,000
40 Crocker Ave.	2020	\$1,000,000	Not required	Not required
89 Maxwellton Rd.	2019	\$1,000,000	\$50,000	\$100,000
43/47 Bellevue Ave.	2019	\$1,000,000	\$50,000	\$100,000
67 Glen Alpine Rd.	2019	\$1,000,000	\$50,000	\$100,000
1635 Grand Ave.	2019	\$1,000,000	\$50,000	\$100,000
26 Ronada Ave.	2018	\$1,000,000	\$25,000	\$25,000

Additionally, condition 8 “Modifications to Conditions” explicitly allows the City to modify the aforementioned conditions, including the monetary bond and insurance requirements included. These conditions serve to address any potential impacts of the application on the public realm. Any construction-related damage or impacts that circumvent the conditions of approval or the building code and construction requirements imposed by the Planning & Building Department would constitute a private land-use dispute within the judicial system.

Appeal Basis #2: The Planning Commission erred in not updating the applicable bond and insurance requirements.

Appellant requests that the conditions of approval included by the Planning Commission be revised to increase the monetary amounts to reflect price adjustments calculated by the Consumer Price Index and California Construction Cost Index.

Appellant ignores the mechanisms within the approval to explicitly address adjustments to bond and insurance requirements.

The amounts included in conditions 7, 22, 23, 24, and 25 were determined after consultations with the City Attorney’s Office, the City Engineer, and the Public Works and Planning and Building directors. Additionally, condition 8 “Modifications to Conditions” explicitly allows the City to modify conditions 7, 22, and 25, including the monetary bond and insurance requirements the appellant highlights. Regarding conditions 23 and 24, which are not covered by condition 8, both have requirements that 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 external consultants and legal counsel.

The Commission delegated the responsibilities to assess the technical and financial requirements of the project to the expertise and analytical ability of City staff and consultants. Additionally, the conditions included within the approval provide financial flexibility to address any potential evolution of the project during the building permit review and construction phases.

Appeal Basis #3: The Planning Commission erred in concluding that the Category 3 exemption under the California Environmental Quality Act (“CEQA”) applies to the proposed project.

Appellant’s contention that an exception to the application of the categorical exemption applies, based on unusual circumstances, is unsupported.

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 to install new landscaping throughout the site.

Under CEQA, a categorical exemption does not apply if there are unusual circumstances. (CEQA Guidelines, Section 15300.2.) The unusual circumstances exception to the exemption applies when both: (1) unusual circumstances, and (2) a significant impact as a result of those unusual circumstances, are shown. (*Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1104.) The Appellant has the burden of demonstrating that the project “has some feature that distinguishes it from others in the exempt class, such as its size or location.” (*Berkeley Hillside Preservation v. City of Berkeley* (2015) 241 Cal.App.4th 943, 952.)

The Appellant contends that the Small Structure Exemption is not appropriate because unusual circumstances are present, due to: (1) unusually hard bedrock at the project site, which is encountered at a relatively shallow level of 6 feet; (2) the steepness of the slope and significant grading; and (3) a history of landslides on the property and in the neighboring vicinity. Thus, according to Appellant, the bedrock, the steepness of the slope and significant grading activities, and landslides are unique conditions that are unusual for projects subject to the Small Structure Exemption. Based on staff’s analysis, none of these conditions presents unusual circumstances under CEQA.

As to the hardness of the bedrock at a 6-foot depth, City records indicate that this is not a unique characteristic of the 139 Lexford property. At 67 Glen Alpine Road and at 89 Maxwellton Road, test bores indicated that the properties encountered bedrock at a depth between 1.5-7 feet and 4-6 feet respectively. Also, in 2010, the City conducted an undergrounding project along Crest Road (approximately 700 feet west of the subject property) and encountered the same bedrock, thereby supporting the finding that other, neighboring single family residences have this similar characteristic. Moreover, construction techniques such as the use of jackhammering is not unusual for such projects.

As to the steepness of the slope and the significant grading activities, City staff have also determined this is not unique to the 139 Lexford property. The City’s records indicate several examples of single-family home construction on sloped lots which require significant grading in Piedmont. Recent examples include:

- 43-47 Bellevue Avenue (significant site grading across a large, sloped parcel) – 30% slope.
- 89 Maxwellton Avenue (construction of a new single-family residence on a steep lot) – 42% slope.
- 40 Crocker Avenue (significant site grading to accommodate a new two-story garage in the street-yard setback) – 42% slope.

Additionally, the subject property’s slope (up to 60%) is analogous to those of adjacent parcels and other lots within the neighborhood:

- 87 Huntleigh Road – 24% slope
- 145 Lexford Road – 46% slope
- 150 Somerset Road – 59% slope
- 140 Somerset Road – 58% slope
- 130 Somerset Road – 48% slope
- 135 Lexford Road – 48% slope
- 132 Lexford Road – 40% slope
- 140 Lexford Road – 51% slope

As to landslides, the geotechnical evidence, including the State's Landslide Inventory, indicates that a landslide has not occurred on the property in over 40 years, and that landslides on developed properties are not unusual in Piedmont. Recent examples of landslides on developed properties include: 3 and 5 Maxwellton Road (caused by faulty irrigation systems), 519 Hampton Road (caused by construction without a building permit), and 183 Somerset Road (unknown cause but occurred during heavy rains).

Thus, based on the foregoing, the circumstances cited by the Appellant do not constitute unusual circumstances under CEQA.

D. Conclusion

Based on the foregoing reasons, the Appellants have not met the burden of demonstrating that the Planning Commission's decision was in error.

CITY COUNCIL ACTION REQUIRED:

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

By: Kevin Jackson, Planning & Building Director
Joshua Muller, Assistant Planner

ATTACHMENTS:

- A Resolution Denying the Appeals of the Planning Commission decision to conditionally approve the design review permit application DRPC2023-018 for 139 Lexford Road
- B January 18, 2024, appeal submitted by Douglas A. Crosby, on behalf of Sven Khatri and Poppy Crum of 145 Lexford Road ("Appellant A")
- C January 18, 2024, appeal submitted by Christopher Van Gundy, Samantha Noble-Block, and Stuart Block of 132 Lexford Road ("Appellant B")
- D Public Comments received from January 9 through noon, March 28, 2024

Documents provided through hyperlink:

[Application Materials, Design Review Permit Application DRPC2023-018](#)

[Planning Commission Staff Report, dated January 8, 2024, Consideration of an Application for Design Review Permit for Proposed Construction at 139 Lexford Road](#)

[Meeting Minutes, Piedmont Planning Commission, January 8, 2024](#) (see minutes pages 10-21)

[Public Comments submitted up to January 8, 2024, for the Planning Commission's consideration](#)

Meeting Video:

January 8, 2024 Planning Commission:

https://piedmont.granicus.com/player/clip/2846?view_id=3&redirect=true&h=b7d0f2f019add19527e9325444bf4f73

RESOLUTION _____**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PIEDMONT DENYING TWO APPEALS OF THE PLANNING COMMISSION DECISION TO CONDITIONALLY APPROVE THE DESIGN REVIEW PERMIT APPLICATION DRPC2023-018 FOR 139 LEXFORD ROAD AND FINDING THE PROJECT EXEMPT UNDER CEQA**

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 to install 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 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 5. 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.

[END OF RESOLUTION]

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

RECEIVED

JAN 18 2024

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: \$834 (includes a \$28 records management fee)

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:

- The findings made by the decision maker as a basis for its action are not supported by the weight of evidence;
- There is a significant error in the application of the requirements of Chapter 17 or other requirements of the City Code;
- There is a significant error in the application of the Piedmont Design Guidelines; or
- 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.

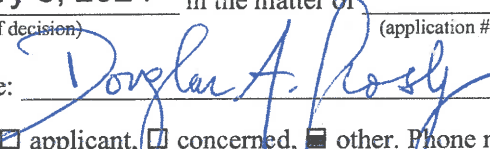
I wish to appeal the decision of the: ☐ Planning Director; or ☒ Planning Commission, which took action on

January 8, 2024 in the matter of **DRPC2023-018** at **139 Lexford Road, Piedmont, CA**

(date of decision)

(application #)

(project address)

Signature: 

Name: **Douglas A. Crosby**

I am the ☒ applicant, ☐ concerned, ☐ other. Phone number **(925) 953-6308** Email **dcrosby@donahue.com**

Mailing Address **Donahue Fitzgerald LLP, 1646 N. California Blvd., Ste 250, Walnut Creek, CA 94596**

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.)

**** Donahue Fitzgerald LLP is legal counsel for Sven Khatri and Poppy Crum, owners of 145 Lexford Road, Piedmont, CA.**

Please see the attached letter to the Members of the Piedmont City Council.

(For staff use only)

APPEALED APPLICATION # _____

PLANNER _____

☐ \$834 FEE PAID

Revised: July 1, 2023



DOUGLAS A. CROSBY
dcrosby@donahue.com

1646 N. California Boulevard, Suite 250, Walnut Creek, CA 94596
tel: (925) 746-7770 fax: (925) 746-7776
www.donahue.com

January 18, 2024

VIA HAND DELIVERY

Members of the City Council
City of Piedmont
120 Vista Avenue
Piedmont, CA 94611

Re: Appeal of January 8, 2024 Piedmont Planning Commission Approval of Application for Design Review Permit for 139 Lexford Road, Piedmont, CA (DRPC2023-018)

Dear Council Members:

This firm represents Sven Khatri and Poppy Crum (collectively, the "145 Owners"), owners of 145 Lexford Road, Piedmont, CA (the "145 Property"). This letter outlines the terms of the 145 Owners' appeal of the Piedmont Planning Commission's (the "Planning Commission") January 8, 2024 approval of an Application for Design Review Permit (the "Design Permit Application") by Willis Yu and Winnie Tam (the "139 Owners") for the proposed development of a new house on their property located at 139 Lexford Road, Piedmont, CA (the "139 Property").

Please be advised that the 145 Owners, and this firm, as their counsel, have not had the benefit of reviewing the final minutes of the Planning Commission's January 8th meeting as the Planning & Building Director for the City of Piedmont has indicated the draft minutes of that meeting will not be posted and available for public viewing until February 2, 2024. As such, the 145 Owners reserve their rights to supplement or amend this appeal to state additional grounds and/or further supporting evidence. Subject to the foregoing, this appeal is based on the following, and relies upon all of the materials previously submitted to the Planning Commission and the City Council in connection with the Planning Commission's approval of the Design Permit Application for the development of the 139 Property.

Pursuant to Section 17.78 of the Planning and Land Use Code of the City of Piedmont (the "P&L Code"), any interested person may appeal a decision of the Planning Commission to the City Council. In addition, pursuant to Section 17.78.040 of the P&L Code, findings made that are not supported by the weight of the evidence are grounds for overruling a decision. On those bases, the 145 Owners submit the following:

Members of the City Council
City of Piedmont
January 18, 2024
Page 2

1. **The Planning Commission erred in concluding that the side yard setback on the east boundary¹ of the 139 Property meets the required 5 feet minimum.**

On December 28, 2023, this office sent a letter to the 139 Owners (the “12/28 Notice Letter”). A copy of the 12/28 Notice Letter is attached to this appeal letter as Exhibit A and hereby made a part hereof. The 12/28 Notice Letter outlines the bases for the existence of the 145 Owners’ prescriptive easement rights over a portion of the 139 Property that is adjacent to the east boundary of the 139 Property, approximately five feet wide and located within a five-foot wide sanitary sewer easement also located within the easternmost five feet of the 139 Property. The prescriptive easement area includes a fence, trees and other landscaping, and that easement area, as well as the location of the sanitary sewer easement, are depicted on the survey map that is included with the 12/28 Notice Letter.

The purpose of the 12/28 Notice Letter was to put the 139 Owners on notice of the prescriptive easement and other concerns of the 145 Owners regarding the proposed development of the 139 Property, and to invite the 139 Owners to engage in constructive conversation to address these concerns and some adjustments in the design plans for the 139 Property. Unfortunately, as of the writing of this appeal letter, the 139 Owners have not responded to the 12/28 Notice Letter, other than to acknowledge receipt and to indicate they were not prepared to respond by the date requested. The 145 Owners remain willing to negotiate with the 139 Owners, however, without any substantive response from the 139 Owners to the 12/28 Notice Letter, the 145 Owners are now preparing to file a lawsuit to perfect their prescriptive easement rights and to protect their trees and landscaping in the prescriptive easement area.

Pursuant to City Code Section 17.20.040, the building setback line from the east side property boundary should be a minimum of five feet. The design plans submitted with the Design Permit Application indicate that the garage for the 139 Property is to be built within approximately one foot of the fence and landscaping in the prescriptive easement area. This plan is clearly in violation of the meaning and intent of the five-foot setback requirement. As a result, the design plans for the garage structure and driveway on the 139 Property need to be revised to comply with a setback of at least five feet from the easement area, and then reviewed by the Planning Commission.

The Planning Commission’s findings that the side yard setback is compliant with applicable codes are not supported by the weight of all evidence provided for this issue, and are therefore in error and must be reevaluated, taking into proper consideration the rights of the 145 Owners to protect their fencing, landscaping and spacing of structures on neighboring properties.

¹ The boundary at issue is technically the southeast boundary of the 139 Property but is referred to in this letter as the east boundary for the sake of consistency with the reference used by the Planning Commission.

Members of the City Council
City of Piedmont
January 18, 2024
Page 3

2. The Planning Commission erred in addressing only the eucalyptus tree along the east boundary line.

The Staff Report submitted to the Planning Commission by Joshua Muller, dated January 8, 2024 (the "Staff Report"), provides in condition of approval No. 18 ("Condition 18") that "[b]efore the issuance of a building permit, the Property Owner shall submit an Arborist's Report and Certified Tree Preservation Plan that includes....the Eucalyptus trees along the east property line." This statement fails to take into consideration the evidence provided in the 12/28 Letter and at the January 8th hearing regarding other trees located near the east boundary of the 139 Property. As indicated on the survey map included with the 12/28 Letter, there are at least ten (10) trees located within the easement area, including maple, juniper and bamboo. Before any plans are approved and construction is commenced on the 139 Property, the root structures of those trees must be established so that a qualified arborist may provide guidance as to how construction may occur without causing damage to those trees.

Condition 18 of the Staff Report also states that "[t]rees proposed for removal shall have an in-lieu replacement tree planted elsewhere on the property, which shall be shown on the final landscape plan." The design plans included with the Design Permit Application do not include any indication that the trees located within the easement area will be preserved. Those trees are of significant value to the 145 Owners and the overall value of the 145 Property. Relocation of those trees elsewhere on the 139 Property would be highly unreasonable and inequitable and would cause the 145 Owners to incur additional loss of enjoyment of those trees and the privacy and screening they provide.

Condition 18 of the Staff Report further states that "[i]f some trees have been compromised, mitigation measures must be specified in writing, and implementation certified by the Project Arborist." Ultimately, compromising any trees and landscaping within the easement area is avoidable by requiring, in consultation with a qualified arborist, a redesign to position the garage structure, driveway and related retaining walls at least five feet further away from the easement area.

3. The Planning Commission erred in failing to acknowledge the potential damage the 145 Owners will experience as a result of construction and grading so close to the driveway on the 145 Property.

The design plans submitted with the Design Permit Application indicate that, as a result of the steep grade of the 139 Property at its eastern boundary, a significant amount of excavation work will need to be done in order to construct a driveway for the 139 Property, a driveway that will have a slope of up to 20 degrees. The proximity of the proposed driveway for the 139 Property to the existing driveway on the 145 Property raises significant concerns about potential damage to the structural integrity of the driveway on the 145 Property, as well as the landscaping adjacent to that driveway. Pursuant to California Civil Code Section 832, "each coterminous owner is entitled to the lateral and subjacent support which his land receives from the adjoining land..." The impact

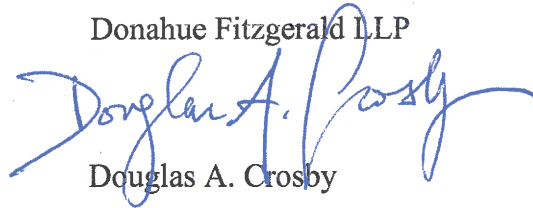
Members of the City Council
City of Piedmont
January 18, 2024
Page 4

of the design of the proposed construction of the garage structure, driveway and related retaining walls on the structural integrity of the driveway and landscaping on the 145 Property and the easement area, both during construction and upon completion of construction have not been fully evaluated, and therefore, based on the weight of this evidence, must be reconsidered.

We appreciate your consideration of these matters and look forward to presenting them to you in more detail at the hearing during which the City Council will consider this appeal.

Very truly yours,

Donahue Fitzgerald LLP



Douglas A. Crosby

DAC:lkb
Enclosure

cc: Sven Khatri
Poppy Crum

EXHIBIT A
TO JANUARY 18, 2024 APPEAL LETTER TO
MEMBERS OF THE CITY OF PIEDMONT CITY COUNCIL

[See attached letter dated December 28, 2023 to Willis Yu and Winnie Tam]



DOUGLAS A. CROSBY
dcrosby@donahue.com

1646 N. California Boulevard, Suite 250, Walnut Creek, CA 94596
tel: (925) 746-7770 fax: (925) 746-7776
www.donahue.com

December 28, 2023

VIA FEDEX

Mr. Willis Yu
Ms. Winnie Tam
3302 Herrier Street
Oakland, CA 95602

Re: Notice of Prescriptive Easement Rights over Property Located at
139 Lexford Road, Piedmont, California, and of Potential Damage to Trees

Dear Mr. Yu and Ms. Tam:

I represent Sven Khatri and Poppy Crum, owners of the residential property located at 145 Lexford Road, in Piedmont, California. As you are aware, my clients' property is located adjacent to your property located at 139 Lexford Road.

Over the past several months, my clients have observed activity on your property indicating you are planning to construct a house on your property. My clients have observed the placement of story poles in areas very near the boundary line between the two properties, including story poles my clients understand to be for the purpose of indicating the outline of a garage structure you are planning to construct on your property. My clients have also observed that, during the placement of the story poles, some of my clients' landscaping has been damaged in the process and may be at risk of further damage.

My clients are also in receipt of a notice from the City of Piedmont Planning & Building Department, dated December 21, 2023, indicating that your application for Design Review permit will be reviewed by the Piedmont Planning Commission at its regular meeting on Monday, January 8, 2024, beginning at 5:30 p.m..

I am writing now because my clients wish to make you aware of (1) certain rights my clients have perfected concerning land located in the area of your planned garage, and (2) damage that may be caused to trees located in that area, and to propose that, in view of those rights and potential damage, you and my clients enter into a formal agreement acknowledging those rights, protecting the impacted trees and addressing certain related issues.

Enclosed please find a boundary survey prepared by Moran Engineering earlier this month. It indicates the existence of the wire fence, constructed on posts, and landscaping, including several trees, near that fence, in locations near the boundary line between the two properties, but located on your property. I note that the fence and the landscaping located on your property are also

Mr. Willis Yu
Ms. Winnie Tam
December 28, 2023
Page 2

located within a five-foot wide reserve that was included in the initial subdivision as an easement for an underground public sewer line running between the manholes that are indicated near the southernmost and easternmost corners of your property.

My clients' ownership and residency at 145 Lexford Road is approaching five years. When they purchased the property, the wire fence and landscaping were located in the same portions of your property as they are today. My clients are aware, based on conversations with their current gardener (who has indicated to them that he has maintained the property for over 20 years), that the wire fence and landscaping have been in their current locations for at least 20 years.

As you may be aware, in California, a user of land owned by another may establish a prescriptive easement over that land by proving that his or her use of that land was: (i) continuous and uninterrupted for five (5) years; (ii) open and notorious; and (iii) hostile. *Warsaw v. Chicago Metallic Ceilings, Inc.* (1984) 35 Cal.3d 564, 570-72; *Felgenhauer v. Soni* (2004) 121 Cal.App.4th 445, 449-50.

A "continuous use" is a use occurring over a five (5) year period on occasions necessary based on the needs or convenience of the user. In some circumstances, even occasional or seasonal use is sufficient. *Weideman v. Staheli* (1948) 88 Cal.App.2d 613, 616 (occasional use sufficient); *Harrison v. Bouris* (1956) 139 Cal.App.2d 170, 173 (used no less than 10 times per year).

Use of a property is considered "open and notorious" when that use provides actual or constructive notice to the owner. *Connolly v. McDermott* (1984) 162 Cal.App.3d 973, 977; see also *Hails v. Martz* (1946) 28 Cal.2d 775, 778. This means that the use of the land is sufficiently visible that anyone who observed it would be able to notice the use. In other words, use is "open and notorious" as long as it is not hidden or concealed from the property owner.

Use of the land of another is considered hostile if that use is without the permission of the owner of the land. The focus there is on whether or not the owner consented to the use of the property. *Aaron v. Dunham* (2006) 137 Cal.App.4th 1244, 1249 ("adverse use" means only that the owner has not expressly consented to the use); *Felgenhauer v. Soni* (2004) 121 Cal.App.4th 445, 447 (claim of right simply means that the property was used without permission of landowner, and the claimant does not need to show that he or she is legally entitled to use of the land in question).

In the current situation, the fence and landscaping were installed over 20 years ago, and have remained in place, without interruption, for the duration of that period. Accordingly, the requirement of five (5) years of continuous and uninterrupted use is clearly satisfied. In addition, the owners of 145 Lexford Road have never made any attempt to hide their use of the area in question. It has stood on its own during the entire time of the use as would be plainly obvious to anyone who observed it. Finally, there is no evidence that any owner of 139 Lexford Road has

Mr. Willis Yu
Ms. Winnie Tam
December 28, 2023
Page 3

ever consented to the use of the area in question by any owner of 145 Lexford Road, thereby making the use hostile.

The uses at issue here have been enjoyed by owners of 145 Lexford Road for many years. To this point, my clients have not been compelled to enforce their prescriptive easement rights or raise any concerns about the health of their trees because 139 Lexford Road has been vacant, without any threat of any infringement on my clients' easement or privacy rights or damage to trees. However, with your placement of the story poles and application for Design Review permit, my clients are now compelled to protect and enforce their rights and their trees.

My clients are concerned that the construction you are planning on 139 Lexford Road will damage the trees indicated on the attached survey. Adjoining landowners have a general duty to act reasonably in managing their land, including removal of roots from trees on a neighboring property in a manner reasonably anticipated not to harm the neighbor's tree. Failure to do so could be deemed negligent, entitling the tree owner to recover damages (*Booska v. Patel* (App. 1 Dist. 1994) 30 Cal.Rptr.2d 241, 24 Cal.App.4th 1786. Under certain circumstances, where the actions of a party causing damage to trees on the land of another are determined to be willful or malicious, the injured party may be entitled to recover up to three times actual damages from the acting party (Cal. Civ. Code §3346 and Cal. Code of Civil Procedure §733).

Before taking any formal legal action to protect and enforce those rights and to protect their trees, my clients have asked me to contact you to discuss the possibility of addressing those rights in an easement agreement between you and my clients confirming those rights, as well as responsibilities of both parties going forward. My clients have invested considerable resources in maintaining the landscaping in that area of their property, including the area covered by their prescriptive easement. My clients therefore want assurances from you that your development and use of 139 Lexford Road would take into consideration the continuing integrity of the wire fence and health of the current landscaping, including the mature trees indicated on the enclosed survey. My clients also intend to protect the privacy rights they enjoy on their property as a result of the screening created by the landscaping.

In exchange, my clients are prepared to agree to assume all liability for their use and maintenance of the easement area and agree to maintain their landscaping such that it does not extend further onto your property.

If you are agreeable to entering into such an arrangement, I will prepare an easement agreement addressing all of these issues, to be signed by both parties and recorded in the Alameda County Records.

It is my clients' belief that working together cooperatively to address these issues will be to the benefit of both parties, and will enable both parties to avoid the cost of any legal dispute that

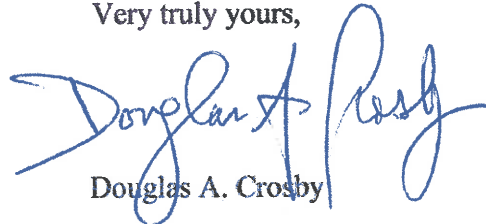
Mr. Willis Yu
Ms. Winnie Tam
December 28, 2023
Page 4

may arise if my clients are otherwise left with the only option taking formal action to enforce their rights.

One of my colleagues will be in attendance at the January 8th Planning Commission Meeting, on my our clients' behalf, to listen to your proposal and to provide any response necessary to protect my clients' rights and interests. It is my clients' hope that we can communicate ahead of that hearing to see if we can resolve my clients' concerns, as explained in this letter, without having to add them to the public comments the Planning Commission will be required to consider.

I would appreciate receiving your response to this letter no later than Wednesday, January 3, 2024.

Very truly yours,

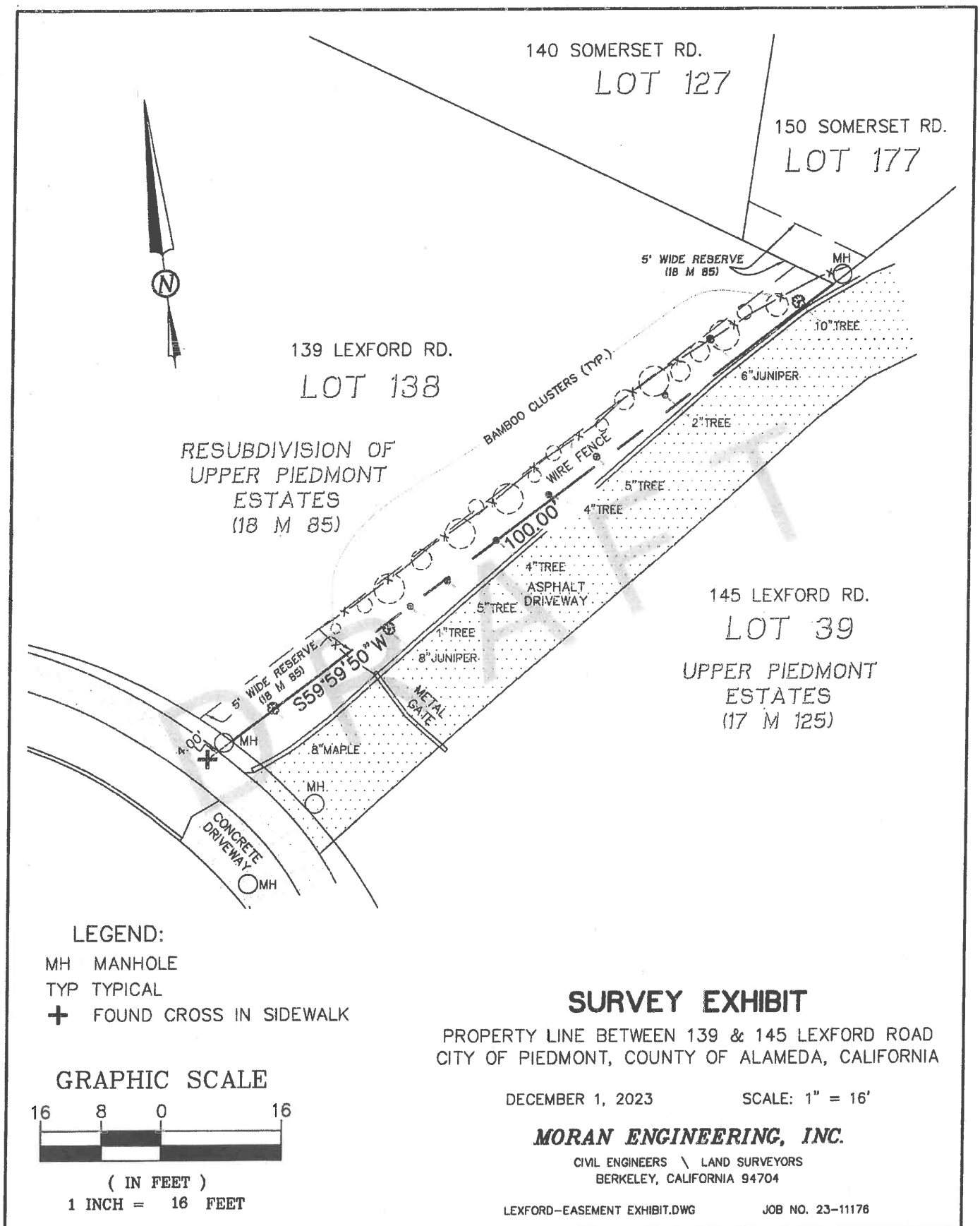


Douglas A. Crosby

DAC:lk

Enclosure

cc: Sven Khatri
Poppy Crum



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

RECEIVED

JAN 18 2024

APPEAL FORM
Pursuant to City Code Division 17.78

CITY CLERK
CITY OF PIEDMONT

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: \$834 (includes a \$28 records management fee)

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:

- The findings made by the decision maker as a basis for its action are not supported by the weight of evidence;
- There is a significant error in the application of the requirements of Chapter 17 or other requirements of the City Code;
- There is a significant error in the application of the Piedmont Design Guidelines; or
- 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
1/8/2024 in the matter of DRPC2023-018 at 139 Lexford Road
(date of dec) (project address)

Signature:  Name: Christopher Van Gundy, et al. (see attached)

I am the ☐ applicant, ☒ concerned, ☐ other. Phone number 510-919-7983 Email christopher.vangundy@gmail.com
(please print)

Mailing Address 132 Lexford Road, Piedmont, 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.)

Piedmont City Code Sections 17.78.040(a) and (b), including Sections 17.64.030.3, and as stated in the attached.

(For staff use only)

APPEALED APPLICATION # _____

PLANNER _____

☐ \$834 FEE PAID

January 18, 2024

Members of the City Council
City of Piedmont
120 Vista Avenue
Piedmont, CA 94611

**Re: Appeal of January 8, 2024 Planning Commission Decision Regarding
139 Lexford Road**

Dear Council Members:

We, the undersigned neighbors of 139 Lexford Road, hereby appeal the Planning Commission's January 8, 2024 approval of the proposed development (Project) at 139 Lexford Road (Property). Because the Planning Commission has not yet published written minutes for that meeting, we reserve our rights to supplement or amend this appeal to state additional grounds or provide additional supporting evidence. Subject to the foregoing, our appeal is based on the following, and incorporates and relies upon all of the materials previously submitted to the Planning Commission and/or the City Council in connection with the currently proposed development as well as past applications for development of the Property.

1. Applicable legal standards

Section 17.64.030.3 of the Piedmont City Charter ("PCC") empowers the Planning Commission or the City Council to impose conditions of approval to the proposed project to "[p]rotect the public health, safety and general welfare" Section 17.78.040 of the PCC provides that the reviewing agency, here, the City Council, must give deference to the Planning Commission's decision, with the burden on the appellants, but can overrule the action of the Planning Commission here for two reasons: "the findings made by the decision maker as a basis for its action are not supported by the weight of the evidence" (subsection a); or "there is a significant error in the application of the requirements of this Chapter 17 or other requirements of the City Code." (subsection b). As explained below, both grounds for overruling the Planning Commission's approval of the 139 Lexford Road project are easily met.

As more fully explained below, the Planning Commission's refusal to impose financial protection for the neighbors and the City in the form of insurance, a completion bond

Members of the City Council

January 18, 2024

Page 2

and construction bond as previous Planning Commissions and City Council panels have done for the property was against the weight of the evidence where all of the geotechnical opinions indicate that the proposed excavation is extreme, could damage neighboring foundations, could lead to landslides as were observed at 183 Somerset and 519 Hampton, and could result in abandonment of the property given that test borings indicated the excavation failed at 6 or 7 feet when up to 30 feet of excavation is required.

The Planning Commission's rejection of these financial protections constitutes an error in the application of Chapter 17 because the Planning Commission refused to consider the neighbors' health, safety, and general welfare. In addition, the Planning Commission incorrectly stated that it was not the role of the commission to impose conditions to address these development risks. Instead, the Planning Commission relied on their finding that the applicant was a "responsible developer," without evidence of prior developments or why this label would override years of geotechnical reports indicating the dangers of this massive excavation to the City, neighboring properties, and personal safety.

These financial protections are necessary because the conditions of approval do not ensure that the neighbors, their property and the City's property are protected. If the applicant discovers what the test borings indicate, that the scale of the proposed excavation is not feasible (based on test borings hitting failure at 6 or 7 feet), or if the foundations are cracked by months of jack hammering with a flatbed mounted hoe ram, or the City's streets are chewed up by hundreds of dump trucks, the neighbors and City will be left without the ability to ensure completion or to fix their foundations, etc. In addition, the conditions of approval do not address reasonable noise mitigation measures (.e.g., limited to weekdays) and hours of construction (e.g., 8 a.m. to 4 a.m.) to mitigate the months of expected jack hammering throughout a neighborhood with seniors and stay at home workers.

2. The Planning Commission's decision to remove critical financial security obligations for the Project that have been in place since at least 2007 is unsupported by evidence and puts the community and the City at risk.

As the Council is aware, the construction plan for the Project includes excavation of more than 30 vertical feet and thousands of tons of fractured bedrock from this very steeply sloped lot. Test borings at the Property have encountered refusal at a depth of

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only 7 feet, so there is currently no actual data or clear understanding regarding deeper conditions or safe excavation practices beyond that depth.

Past City Engineers as well as two respected engineering firms, Alan Kropp & Associates and ENGEO, are on record with very significant concerns regarding the risks and potential impacts of the proposed excavation. Mr. Kropp's conclusions are set forth in letters dated March 27, 2006, December 4, 2007, and October 7, 2015 and an email dated January 8, 2024. ENGEO's conclusions are set forth in its letter dated September 9, 2015. Mr. Kropp's 2015 and 2024 correspondence and ENGEO's 2015 letter are attached as Exhibit A.

The engineers' concerns focus on two key issues: "Landslides and other slope instabilities, particularly regarding a landslide which originated on the property in the 1970s," and "[d]ust, noise and vibrations from the large construction equipment (like a hoeram) that will be required to excavate into the hard bedrock present."

Noting a prior landslide at the Property that "damaged [the property at 87 Huntleigh Road] and closed Lexford and Huntleigh Roads for two days," Mr. Kropp states: "it was then and is now my opinion that these two issues represent significant impacts due to unusual circumstances and must be considered in the project submittal process."

In his January 8, 2024 correspondence, Mr. Kropp highlights the importance of providing meaningful protections to the neighbors due to the unique risks and impacts associated with the Project. He states:

The site and the proposed project at 139 Lexford Road present an unusual combination of circumstances that make the project significantly more difficult and more risky than other residential construction projects on sloped lots in the City. . . . Either from the difficult excavation or from other elements of the project construction activities, shaking, or other consequences of the work may impact neighboring properties. Therefore, the City must require a Neighboring Property Inspection condition be imposed for adjacent properties before the construction work commences to document existing conditions. Appropriate types and levels of insurance should be provided to cover any damages to nearby property owners.

Recognizing of the substantial risks associated with the proposed development at this Property, following careful consideration and debate and with a strong supporting record, in 2005, 2007, in 2015 and in 2017, the City imposed a number of important conditions on the development of the Property to protect surrounding neighbors and the City itself. Those conditions are set forth in the Council minutes from September 14,

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2015, which are attached as Exhibit B. The conditions were also included and updated as part of a Settlement Agreement resolving the CEQA lawsuit filed against the City regarding the Property in 2016. The updated conditions adopted by the City in 2016 are attached as Exhibit C.

These conditions, dating back nearly 20 years, include:

(1) a **Neighboring Property Inspection** prior to construction to establish baseline conditions for neighboring structures and foundations;

(2) a **Neighboring Property Damage Security Bond** in the amount of \$3,000,000 to insure against damage to neighboring properties from the hoe-ram pounding required to remove the 30 feet and 1,350 cubic yards of bedrock at the Property;

(3) a **Site Safety and Security Bond/Performance Bond** in the amount of \$200,000 to assure completion of excavation and stabilization activities at the Property; and

(4) a **City Facilities Security Bond** in the amount of \$350,000 to secure against damage to City property (*i.e.*, streets and sidewalks) arising from the excavation and development work.

The Project approval issued by the Planning Commission on January 8, 2024 completely eliminated the Neighboring Property Inspection and the Neighboring Property Damage Security Bond that had been in place since at least 2005. It reduced the Site Safety and Security Bond from \$200,000 to \$15,000 and reduced the City Facilities Security Bond from \$350,000 to \$100,000. The Planning Commission removed these neighborhood protections without providing any evidence to support their elimination and in the face of 20 years of overwhelming evidence – adopted by the Planning Commission itself – to support the conditions in past approvals. A chart showing the changes to these key conditions is attached as Exhibit D.

In their deliberations on January 8, 2024, the Planning Commission stated that costs associated with completion bonds and related security measures could have the effect of chilling development and that, as a result, the Planning Commission was no longer requiring such financial security measures. While not imposing blanket security financial security conditions may be a valid and even laudable with respect to a standard development with little risk and no danger to surrounding properties, **such a policy cannot and does not justify eliminating appropriate protections for**

projects where the overwhelming evidence identifies significant risks due to unique or non-standard property conditions.

As the record demonstrates, since at least 2005, every engineer who has reviewed the Project has identified significant planning and safety concerns relating to the excavation of over 1,350 cubic yards (more than 4.5 million pounds) of fractured bedrock from the steeply sloped Property.

It is not a sufficient response to say, as the Planning Commission did, that the Project “can be built” and that the project proponent is a “responsible developer.” Anything “can be built.” The question is how it can be built without creating significant risk to the community. Similarly, a “responsible developer” provides protections to address known risks. It is the role of the Planning Commission, and indeed this City Council, to protect the safety of its citizens and also to “protect investments in property and lifestyle quality made by persons who choose to live, work, or do business in the City.” (Section 17.36.020.) That requires evaluating each project individually and making decisions and, where appropriate, imposing conditions, in support of these objectives.

Removing the financial security measures that the City has imposed since 2005 deprives the neighbors, as well as the City, of any financial protection should the excavation work be more difficult or more expensive than anticipated and the project developers (through their LLC) simply walk away. In that case, there would be no funds available to secure and stabilize the Property or repair the damage caused by the work.

Simply put, there is no meaningful basis in the record to support the City’s removal of these critical project conditions. To the contrary, there is nearly 20 years of record supporting such conditions. Any approval of the project must include all the Conditions of Approval that the City and Planning Commission have historically required for the project at 139 Lexford, including the amendments included in the 2016 lawsuit settlement and Condition No. 5 from the 2007 approval (Exhibit E). Having adopted such requirement initially, along with a strong rationale for its inclusion, the City could put itself at substantial risk by deleting it now.

3. The Planning Commission erred in not updating the applicable bond and Insurance requirements

Since the initial and subsequent approvals of this project home values in Piedmont and construction costs throughout the state have both increased significantly. Accordingly, **to provide the same level of protection of the 2015 Conditions of Approval and**

amendments from the 2016 lawsuit settlement, the dollar amounts for Conditions must be increased to address construction cost increases since the 2015 approval and 2016 lawsuit settlement. Failure to do so would put all adjacent homeowners at significant financial risk. Likewise, any reduction in the protections by the City, including any failure to right-size the dollar figures, creates potential liability risk for the City in its oversight capacity. Moreover, these bonds can be secured for a relatively nominal amount, typically of 1-3% of the secured amount.

Based on the California Construction Cost Index annual percentage increases from December 31, 2016 through December 31, 2023, the 2024 insurance and bond amounts for the project at 139 Lexford would be increased to the following rounded amounts:

- 2024 Updated 139 Lexford Site Safety Security: **\$316,000**. (The 2015 Condition of Approval #5 as amended by the 2016 lawsuit settlement specified an original amount of \$200,000.)
- 2024 Updated 139 Lexford City Facilities Security: **\$550,000**. (The 2015 Condition of Approval #6 specified an original amount of \$350,000.)
- 2024 Updated 139 Lexford Neighboring Property Damage Security: **\$4,750,000**. (The 2015 Condition of Approval #7 specified an original insurance amount of \$3,000,000.)

These numbers reflect a simple, straight-line percentage calculation based on California Construction Cost Index (CCCI) data from December 31, 2016 through December 31, 2023. We have annualized this calculation for your ease of reference in the table attached as Exhibit F, but to summarize, **since 2015, construction costs in California have increased by more than 58%.**¹

Failure to increase the bond and insurance amounts to account for the radical increase in construction costs in the years since this project was last approved in 2015 would significantly reduce the protections previously identified by the City as necessary and appropriate for the Project. Any such a reduction, including the failure to use published State construction cost data to update bond and insurance amounts to reflect the

¹ The data from the California Construction Cost Index used to calculate these numbers can be found at: <https://www.dgs.ca.gov/RES/RESOURCES/RESOURCES-List-Folder/DGS-California-Construction-Cost-Index-CCCI?search=construction%20cost%20index>

current construction environment, deprives Piedmont residents of important protections which the City has previously recognized.

4. The Planning Commission erred in concluding that the Category 3 exemption under the California Environmental Quality Act (“CEQA”) applies to the proposed project.

In determining whether an exemption to CEQA’s study and planning procedures apply to the development, the Planning Commission was required, as confirmed by the Assistant City Attorney at the hearing, to decide whether the proposed development posed: a) significant environmental effects due to; b) unusual circumstances.

Significant Environmental Effects

All of the evidence presented to the Planning Commission indicated that the proposed development posed “significant environmental effects.” There was no contrary evidence. For reference, the evidence of significant environmental effects included:

- a. Unrebutted 2007 geotechnical reports prepared by Alan Kropp, a highly-respected local geotechnical engineer, that unusual circumstances exist due to the excavation of an unusually large amount of hard, fracturable bedrock overlain with loose soils prone to landslide on a very steep slope, leading to two significant environmental effects: 1) landslide/slope instability and 2) noise/dust/vibration (with concomitant dangers to surrounding home foundations). Mr. Kropp confirmed these opinions in his September 10, 2015 email submittal and September 14, 2015 testimony to the Planning Commission, and more recently in his opinion email submitted to the Planning Commission here for its January 8, 2024 hearing. Indeed, Mr. Kropp identified numerous “unusual circumstances” otherwise described herein.
- b. An opinion letter from ENGEO Incorporated dated September 9, 2015 , a well-known geotechnical engineering firm, concurring with Mr. Kropp’s 2007 opinions, “specifically regarding the risk of landslides associated with the extensive bedrock excavation, especially during periods of heavy rains, and the impacts from the significant vibrations caused by the excavation work, trucks and related equipment. Each of these impacts is exacerbated by the fact that the work is planned in a fully built, mature neighborhood with the lot surrounded closely by occupied homes on all sides.

- c. The current City Engineer report indicating that a “hoe-ram” (large jack hammer mounted on a flatbed truck) may be required to hammer out the estimated 1,350 cubic yards [translating to 4.5 million pounds] of hard, fractured bedrock at the steeply-sloped project site.
- d. A previous City Engineer report stating that the amount of material to be extracted could involve as much as 300 10-wheel dump trucks’ worth of material.
- e. Confirmation by the City Engineer and Alan Kropp that the excavation would occur in an otherwise fully built out neighborhood, at a sharp bend in the road, involving anywhere from 6 feet to 31 vertical feet of excavation at points where the incline is almost 1:1.
- f. The property previously suffered a significant landslide in the 1970s, inundating the property across the street at 87 Huntleigh Road (now owned by Stuart Block and Samantha Nobles-Block). The prior owner of 87 Huntleigh, Mrs. Evelyn Hertz, previously testified regarding the landslide and we intend to supplement the record, as appropriate, with a declaration from Mrs. Evie Hertz confirming her previous statements.

The August 27, 2015 report submitted by Purcell Associates on behalf of the developer did not address, much less dispute, these significant environmental effects. Instead, it summarized a 2002 foundation report which indicated how the foundation might be built. The Purcell report indicated that nothing precluded the development from a geotechnical standpoint, but that was beside the point. The point is, in developing the property, the significant environmental effects due to unusual circumstances require CEQA study and planning BEFORE approval of the project. The many conditions with approval, though appreciated by the neighbors, are no substitute for CEQA planning and study.

The only indication contrary to a finding of significant environmental effects was Commissioner Chase’s unsubstantiated speculation that the landslide in the 1970s was minor. The prior testimony of Mrs. Hertz, who was present and suffered the impacts from the landslide, fully refutes this speculation.

Thus, the Planning Commission did not base its finding of an exemption from CEQA based on lack of significant environmental effects from the project. If it did, that finding was clearly contrary to the great weight of the evidence.

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Instead, the Planning Commission determined that the CEQA exemption applied due to a lack of “unusual circumstances.” This finding also lacked evidence, or was against the weight of the evidence.

Unusual Circumstances

At the September 14, 2015 hearing, which materials were submitted again to the Planning Commission for its January 8, 2024 hearing, and again in his email submission for the January 8, 2024 Planning Commission hearing, Mr. Kropp expanded on the statements in his 2007 reports in explaining the unusual circumstances associated with the subject property that give rise to the significant environmental effects. He noted, for example, that the bedrock was unusually hard, that the amount of excavation was unusually large and excavation/development projects in the area encountering similar conditions have been abandoned due to the uneconomically high costs of completing the excavation and stabilization work. He also noted that the landslide at 519 Hampton involved similar soil conditions and similar risk to the subject property.

In addition, engineering reports submitted in connection with prior review of this property and cited by all parties indicated that the project will require excavation of bedrock up to 31 deep, and that all drilling/sampling of the bedrock hit “refusal” at six feet, meaning the drilling could go no further without highly specialized (and expensive) equipment, such as a diamond drill.

At the September 14, 2015 hearing, the developer’s own structural engineer testified that the hardness of the bedrock at the property and the scope of the excavation made the project “unusual.” Based on this admission alone it is simply not possible for the City to maintain the position that this project does not present unusual circumstances.

The only evidence presented in support of the Planning Commission’s “no unusual circumstances” finding came from Staff in response to a question by Commissioner Chase. At the Commissioner’s request, Staff recited a list of several properties in Piedmont that it asserts involved “similar” excavations and/or steep slopes. Staff provided no specific details on the conditions of or work performed at these properties, no indication of the type of material (soil versus bedrock), if any excavated, no measure regarding the amount of excavation involved and no information regarding the steepness of the slope at issue. Instead, staff merely stated that the projects were “similar.”

This recital of “similar” properties was new evidence was presented for the first time at the September 14, 2015 hearing. Appellants respectfully reserve the right to review and

address this evidence following their review, and their experts' review, of the relevant project files.

Regardless of this new list, based on the unrebutted testimony regarding the unusual nature of the project, including the amount and hardness of the bedrock to be removed and the sheer depth of the required excavation, including such testimony from the developer's own expert, the Planning Commission's finding that an excavation up to 31 feet into hard, fracturable bedrock to remove 4.5 million pounds of such material on a very steep slope with a history of prior landslide in a mature neighborhood was not "usual," was not and cannot be supported by the evidence.

Respectfully Submitted by:



Christopher Van Gundy
132 Lexford Road



Samantha Nobles-Block and Stuart Block
87 Huntleigh Road

Individually and, as authorized, on behalf of:

Anuraag Kansal and Joelle Frechette, 135 Lexford Road

Sébastien Sahuc and Kristina Kliszewski, 68 Huntleigh Road

Poppy Crum, 145 Lexford Road

Ray Li, 130 Somerset Road

Michael and Holly Gardner, 125 Lexford Road

Timothy Kahn and Anne Adams, 124 Lexford Road

Shari Fujii and Douglas Higasi, 101 Lexford Road

Bonnie and Richard Wang, 168 Lexford Road

Maryolyn and Paul Stanley, 160 Somerset Road

Lauren Westreich and Bob Emerson, 115 Lexford Road

Christine and Poul Erik Olsen, 116 Lexford Road

EXHIBIT A



ALAN KROPP
& ASSOCIATES, INC.

GEOTECHNICAL
CONSULTANTS

ALAN KROPP, CE, GE

JAMES R. LOTT, CE, GE

THOMAS M. BRENDIG, CE

ALMA G. LUNA, CE

JOSE R. SERRANO, CE

October 7, 2015
504-2A, L-30371

Mr. Christopher Van Gundy
Keller and Heckman
Three Embarcadero Center, Suite 1420
San Francisco, CA 94111

RE: Geotechnical Concerns
Proposed Residence at 139 Lexford Road
Piedmont, California

Dear Mr. Van Gundy:

At your request, I am performing geotechnical engineering consultation services regarding the proposed residence at 139 Lexford Road in Piedmont, California. I previously performed similar consultation services between 2000 and 2007 regarding earlier versions of the proposed home; my comments regarding those design concepts were summarized in letters dated August 15, 2000, March 27, 2006, and December 7, 2007. I recently testified at the September 14, 2015 Planning Commission meeting regarding this project and this letter provides follow-up information to that testimony.

As I explain below, the site and the proposed project at 139 Lexford Road present an unusual combination of circumstances that make the project significantly more difficult and more risky than other residential construction projects on sloped lots, including the approved projects identified by the City at the September 14, 2015 Planning Commission meeting. The Lexford project involves not only the steepest elevation and the deepest cut of the identified sites, each by a wide margin, but also has a proposed excavation volume twice that of the next largest excavation and more than seven times those of the other documented sites.

QUALIFICATIONS

I am a registered civil engineer and geotechnical engineer in the state of California. I obtained a masters degree in civil engineering with an emphasis on geotechnical engineering from the University of California in 1973, and have practiced geotechnical engineering in the East Bay since my graduation. I began my own firm in 1978, and I have performed geotechnical engineering design services for over 2,000 hillside residences since that time. A copy of my resume is attached.

KEY GEOTECHNICAL ISSUES

As I indicated at the Planning Commission meeting, there are a number of geotechnical issues that are quite unique for this project that bear careful scrutiny. These are in addition to the more typical issues of dust, vibrations, truck traffic, etc. and include:

- Hard rock drilling - The bedrock in this area is very hard and drilling shoring piers to restrain excavations of greater than 30 feet may encounter drilling refusal (meaning the drill will go no further) well before the recommended depths are achieved. All sample drilling at the site to date has encountered refusal at approximately six feet below ground surface. Very specialized equipment that is not commonly used in East Bay drilling may be necessary for the proposed excavation work. Without such equipment (and the related high cost), the drilling contractor may abandon the site due to the difficulties, leaving an unsupported, unstable excavation.
- Bedrock block topples - Although the bedrock is very hard, there are thin weak seams in the rock which may result in blocks of the bedrock toppling into the excavation as the excavation proceeds, and even rolling into or across the street. If proper shoring is installed, these topples will generally be restrained, but during the excavation process they may be quite dangerous. Having full time monitoring of the excavation process by an experienced engineering geologist to identify potential weak seams and constructing significant rockfall protection netting to minimize and control the blocks will be needed; it is possible some rock bolting may be necessary even to complete the excavation process. This is especially important given the prior reports of a landslide from the property in the 1970s that caused substantial damage at 87 Huntleigh Road.

EVALUATION OF LISTED SITES

The Planning Commission (and City staff) in their evaluation of the project understood that there will be excavations over 30 feet high that need to be shored, and approximately 1,350 cubic yards of excavated material hauled off the site. However, they concluded the proposed project was not unusual relative to several other development projects approved by the City over the years with a categorical exemption and no EIR.

At the hearing, the City identified 24 such projects. It divided the comparison projects into three categories: seven new single-family houses on steep vacant lots; seven projects involving the removal of all or a significant portion of an existing residence to be replaced by a new residence; and ten projects with renovations to an existing residence or site. Due to the limited time permitted by the City for submittal of this report, I focused my investigation on the first seven projects – the ones identified by the Commission as being on “steep vacant lots”. In my opinion, projects involving simply the replacement of an existing residence with a new residence or the renovation of existing residence cannot be considered as similar to the project proposed for the Lexford site as it relates to the key issues of excavation and slope stability. Accordingly, a focus on the seven so-called “steep vacant lot” properties is appropriate.

The addresses listed of seven potentially relevant properties are:

- 1, 3, 151, and 155 Maxwellton Road
- 53 Cambrian Road
- 74 Huntleigh Road
- 14 Littlewood Drive

I have performed geotechnical investigations for over 20 new hillside homes, additions, or major remodels in Piedmont; thus, I am very familiar with hillside construction practices in the city. I have specific information in my files related to many of the sites indicated on the City list because my firm has provided all of the geotechnical engineering services for the Cohen house reconstruction at 150

Maxwelton Road (across the street from 151 and 155 Maxwelton Road), provided expert witness services after the landslide several years ago at 3 Maxwelton Road, and also provided a geotechnical investigation proposal for the 74 Huntleigh Road site. I have also obtained information regarding several of the other sites from the City, studied aerial photography of the sites, and have personally visited all of the sites on the list.

Key data I have compiled regarding the Lexford site and the sites listed by the City are summarized on the attached table. In sum, the project proposed at the Lexford site is steeper, deeper and taller than each of the other projects by a wide margin – at least two times in most cases and as much as seven times in others. In addition, have the following specific comments based on the table:

- The Littlewood Drive site is a downslope property where minimal excavations will be performed. It is not at all like the Lexford site (only upslope lots should have been listed)
- 151 and 155 Maxwelton Road are modest, not steep upslope lots (see the inclinations listed on the table) and each had much smaller excavations than the Lexford lot. In addition, each had a maximum cut of less than 1/3 of that proposed for the Lexford site, a distinction which is extremely significant from a shoring and stability perspective
- 1 and 3 Maxwelton Road homes were built stepped up the hillside to avoid large excavations and thus had much smaller excavations than the Lexford lot. Here as well, each had a maximum cut of approximately 1/3 of the cut proposed for the Lexford site
- 53 Cambrian Avenue has a total excavation and off-haul of only 185 cubic yards of fill, less than 15% of the proposed excavation at Lexford. It also had a maximum cut of only 5-10 feet
- The 74 Huntleigh Road property, which is perhaps the most comparable to the Lexford site, has cuts and excavation quantities of only about one-half those proposed for the Lexford property

CONCLUSION

In every respect, the Lexford Road site has excavation cuts and off-haul quantities far in excess of the other listed sites, and it is my opinion the properties that were listed should be considered significantly different and not comparable to the site at 139 Lexford Road.

I would also be concerned that the unusual circumstances presented by the Lexford site with respect to excavation, stabilization, and shoring could lead to abandonment of the project due to excessive difficulty and cost. Such abandonment would create considerable risk for both upgradient and downgradient neighbors. I recommend that there be sufficient financial security in place to allow a third party to promptly, safely, and permanently stabilize the property in the event the project is stalled or abandoned. As ENGEO stated in its report, proper shoring and stabilization of this site could easily extend into the many hundreds of thousands of dollars.

The opinions and conclusions in this letter are made in accordance with generally accepted geotechnical engineering principles and practices. No other warranty, either expressed or implied, is made.

If you have any questions concerning this letter, please call us.

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504-2A

Very truly yours,



Alan Kropp, G.E.
Principal Engineer



AK/jc

Copies: Addressee (PDF) - vangundy@khlaw.com

504-2A Lexford Concerns (10-7-15)

Address	Maximum Elevation Difference-Street to Rear of House (Feet)	Slope Inclination (Horizontal to Vertical)	Estimated Maximum Cut (Feet)	Estimated Volume of Excavation (Cubic Yards)	Comments
<i>139 Lexford Road</i>	<i>55</i>	<i>1:1 Front, 2:1 Rear</i>	<i>30</i>	<i>1350</i>	
53 Cambrian Avenue	25	8:1 Front, 2:1 Rear	5-10	185	Currently Vacant
14 Littlewood Drive		3:1	Minimal		Downslope, Currently Vacant
74 Huntleigh Road	30	1.75:1	15-20	689	Currently Vacant
1 Maxwelton Road	25	1.5:1	5-10		
3 Maxwelton Road	30	1.75:1	10-12		
151 Maxwelton Road	25	3:1	8-10		
155 Maxwelton Road	20	4:1	8-10		

**ALAN KROPP
& ASSOCIATES, INC.**



**GEOTECHNICAL
CONSULTANTS**

RESUME

Name: Alan Kropp

Education: California State Polytechnic College, Pomona, BSCE, 1971, Civil Engineering
University of California, Berkeley, MSCE, 1973, Geotechnical Engineering

Professional Societies: American Society of Civil Engineers – Including Invited Member, National Committee Drafting "Standards for Design of Residential Foundations on Expansive Soils"
Geoprosessional Business Association
CalGeo Association
International Conference of Building Officials
International Erosion Control Association
Earthquake Engineering Research Institute – Including Member of EERI State Earthquake Clearinghouse Advisory Committee
Seismological Society of America
Structural Engineers Association of Northern California
American Society for Testing and Materials

Registration: Civil Engineer, California, #23921, July 1973
Geotechnical Engineer, California, #487, September 1987

Experience: May 1978 - present
Alan Kropp & Associates, Berkeley, California
Principal Engineer
Perform foundation investigations and geological or fault evaluations for hillside residences, churches, condominiums, subdivisions, office and commercial buildings, shopping centers, warehouses, bridges, and dams. Investigate landslides and building distress, residential foundations, parking lots, and provide expert witness testimony. Also provide consultations on pavement design, deep site improvement, and development of seismic design criteria. Most projects located in Western United States, but additional projects in Italy, Japan, Nepal, Puerto Rico, Canada, Taiwan, Turkey, and China.

August 1975 - May 1978
Peter Kaldveer and Associates, Oakland, California
Associate (1977-78), Project Engineer (1975-77)
Managed foundation investigations, geological evaluations and seismic response analyses for projects including major hillside residential development, cluster of high-rise apartment towers and reconstruction of major container cargo terminal. Included overall responsibility for field investigation, laboratory testing, engineering analyses and report writing. Trained and supervised daily activities of two staff engineers. Responsible for technical development of firm.

July 1972 - August 1975
Lowney/Kaldveer Associates, Oakland, California
Project Engineer (1974-75), Senior Engineer (1973-74), Staff Engineer (1972-73)
Performed foundation investigations and geological evaluations of projects including schools, hospitals, warehouses, pipelines, commercial buildings, and military buildings, as well as other facilities. Included responsibility for field investigation, laboratory testing, engineering analysis and report writing.

Representative Publications

- "Probabilistic Liquefaction Evaluation of a Riverfront Site," Proceedings, Canadian National Conference on Earthquake Engineering, Vancouver, British Columbia, 1983
- "Landslide Investigation Utilizing Electric Cone Penetration Testing," Co-Authored with James French, Proceedings, Use of In-Situ Tests in Geotechnical Engineering, American Society of Civil Engineers Specialty Conference, Blacksburg, Virginia, 1986
- "A Comparison of Published Ground Motion Parameters," Proceedings, 3rd International Conference on Soil Dynamics and Earthquake Engineering, Princeton, New Jersey, 1987
- "Existing Pile Load Capacity Evaluation," Proceedings, Second International Conference on Case Histories in Geotechnical Engineering, St. Louis, Missouri, 1988
- "Air Photo Interpretation - A Consultant's Perspective," Co-Authored with Michael Thomas, Proceedings, 24th Symposium on Engineering Geology & Soils Engineering, Coeur d'Alene, Idaho, 1988
- "Biotechnical Stabilization of a Debris Flow Scar," Co-Authored with Michael Thomas and Andrea Lucas, Proceedings, 20th International Conference on Erosion Control, Vancouver, British Columbia, 1989
- "Preliminary Report on the Principal Geotechnical Aspects of the October 17, 1989 Loma Prieta Earthquake," Co-Authored with R.B. Seed, S.E. Dickens, M.F. Riemer, J.D. Bray, N. Sitar, J.K. Mitchell, I.M. Idriss, R.E. Kayen, L.F. Harder, Jr., and M.S. Power, University of California at Berkeley, Earthquake Engineering Research Center Report 90-05, 1990
- "Ground Failure in Downtown Santa Cruz," Co-Authored with Michael Thomas, Association of Engineering Geologists, Loma Prieta Earthquake Special Publication No. 1, 1991
- "Ground Failure During Loma Prieta Earthquake - Downtown Santa Cruz," Co-Authored with Michael Thomas, Proceedings, Second International Conference on Recent Advances in Geotechnical Earthquake Engineering and Soil Dynamics, St. Louis, Missouri, 1991
- "Importance of Drainage in Biotechnical Stabilization Projects," Proceedings, National Science Foundation Workshop on Biotechnical Stabilization, Ann Arbor, Michigan, 1991
- "Partial Landslide Repair By Buttress Filling," Co-Authored with Michael Thomas, in Rockfall Prediction and Control and Landslide Case Histories, Transportation Research Board, Transportation Research Record 1343, 1992
- "Stabilization of Debris Flow Scar Using Soil Bioengineering," Co-Authored with Michael Thomas, in Rockfall Prediction and Control and Landslide Case Histories, Transportation Research Board, Transportation Research Record 1343, 1992
- "Earthflow Evaluation and Control: A Case History," Co-Authored with Michael Thomas, Proceedings, Stability and Performance of Slopes and Embankments - II, Berkeley, California, 1992
- Invited Paper: "Field Wetting Tests on a Collapsible Soil Fill," Co-Authored with David McMahon and Sandra Houston, 1st International Symposium on the Engineering Characteristics of Arid Soils, Proceedings Edited by P.G. Fookes and R.H.G. Parry, London, England, 1993
- Invited Paper: "Case History of a Collapsible Soil Fill," Co-Authored with David J. McMahon and Sandra L. Houston, in Vertical and Horizontal Deformations of Foundations and Embankments, Edited by Albert T. Yeung and Guy Y. Felio, Society of Civil Engineers, American Society of Civil Engineers, Geotechnical Special Publication 40, Settlement '94 Specialty Conference, College Station, Texas, 1994
- "The Performance of Hillside Fills During the Northridge Earthquake," Co-Authored with David McMahon, Jonathan Stewart, and Jonathan Bray, Third International Conference on Recent Advances in Geotechnical Earthquake Engineering and Soil Dynamics, St. Louis, Missouri, 1995
- "Seismic Performance of Hillside Fills," Co-Authored with David McMahon, Jonathan Stewart, and Jonathan Bray, in Landslides Under Static and Dynamic Conditions - Analysis, Monitoring and Mitigation, Edited by David K. Keefer and Carlton L. Ho, American Society of Civil Engineers, Geotechnical Special Publication 52, 1995
- "Maps and Descriptions of Liquefaction and Associated Effects - The Loma Prieta, California, Earthquake of October 17, 1989," Co-Authored with John C. Tinsley, John A. Egan, Robert E. Kayen, Michael J. Bennett, and Thomas L. Holzer, in The Loma Prieta, California, Earthquake of October 17, 1989 - Liquefaction, T.L. Holzer, Editor, United States Geological Survey, Professional Paper 1551-B, 1998
- "CPT, DMT and Shear Wave Velocity Evaluation of Liquefaction Sites in Santa Cruz and Treasure Island," Co-Authored with R.D. Hryciw and S.E. Shewbridge, in The Loma Prieta, California, Earthquake of October 17, 1989 - Liquefaction, T.L. Holzer, Editor, United States Geological Survey, Professional Paper 1551-B, 1998
- "Possible Costs Associated with Investigating and Mitigating Some Geologic Hazards in Rural Parts of San Mateo County, California," Co-Authored with Earl E. Brabb, Sebastian Roberts, William R. Cotton, Robert H. Wright, and Erik N. Zinn, United States Geological Survey, Open File Report 00-127, 2000

- "Comparison of Laboratory Data and Field Performance for Fills Subject to Hydrocompression" and "Proposed Compaction Specifications to Minimize Hydrocompression-Induced settlements in Fills Supporting Residential Structures," Each Co-Authored with David J. McMahon, in Constructing and Controlling Compaction of Earth Fills, David W. Shanklin, Keith R. Rademacher and James R. Talbot, Editors, American Society for Testing and Materials, STP 1384, 2000
- "Seismic Performance of Hillside Fills," Co-Authored with Jonathan P. Stewart, Jonathan D. Bray, David J. McMahon, and Patrick M. Smith, Journal of Geotechnical and Geoenvironmental Engineering, American Society of Civil Engineers, November 2001, Volume 127, Number 11
- "Residential Design Approaches Over Earthquake-Induced Ground Shearing," Co-Authored with James Lott, 11th International Conference on Soil Dynamics and Earthquake Engineering and 3rd International Conference on Earthquake Geotechnical Engineering, Proceedings Edited By A. Doolin, A. Kammerer, T. Nogami, R.B. Seed and I. Towhata, Berkeley, California, 2004
- "Fault-Related Landslide at Cragmont School, Stop 6" in The Hayward Fault (Chapter 17), Doris Sloan and Donald Wells, Co-Editors, 1906 San Francisco Earthquake Centennial Field Guides, Edited by Carol Prentice, Judith Scotchmoor, Eldridge Moores, and Jon Kiland, Geological Society of America, Field Guide 7, Boulder, Colorado, 2006
- "Cragmont School Landslide, Stop 3" and "Blakemont Landslide, Stop 4," in Bay Area Landslides and Hayward Fault, Tour 3, Fourth International Conference on Geotechnical Earthquake Engineering and Soil Dynamics, Sacramento, California, 2008
- "Survey of Residential Foundation Design Practice on Expansive Soils in the San Francisco Bay Area," Journal of Performance of Constructed Facilities, American Society of Civil Engineers, February 2011, Volume 25, Issue 1
- "Geologic Hazard Abatement Districts: A Response to Landslide Control," Geo-Strata Magazine, American Society of Civil Engineers Geo-Institute, March/April 2013

Representative Lectures

- "Field Investigations," "Landslide Causes," "Debris Flows" and "Control, Prevention and Repair of Landslides," University of Wisconsin (Madison), National Technical Course on Slope Stability and Landslides, San Francisco (1984, 1985), Madison (1986), San Diego (1987), Tacoma (1988), San Diego (1989), Denver (1990), Berkeley (1991, 1992)
- "Engineering Aspects of Landslides," Legal Issues and Landslides, Sponsored by San Francisco Barrister's Club, San Francisco, March 31, 1984
- "Slope Stability," Soil Engineer's License Review Course, University of California, Berkeley, 1987-1992 (annually)
- "Techniques and Costs of Landslide Repair," Geotechnical Group, Washington D.C. Chapter of American Society of Civil Engineers, McLean, Virginia, 1987
- "Analysis of Landslides" and "Landslide Repair Examples," Landslide Hazard Analysis and Mitigation Conference, ABAG Training Institute, Oakland (1988), Palo Alto (1988)
- "Causes of Slope Failure" and "Landslide Repair Examples," Erosion Control and Slope Protection Short Course, University of California (Davis), 1988
- "Grading to Stabilize Landslides," "Drainage Methods to Stabilize Landslides," and "Debris Flow Stabilization," University of Wisconsin (Madison), National Course on Practical Slope Restoration Methods, San Diego (1989), Denver (1990), Berkeley (1991, 1992)
- "Ground Failure in Downtown Santa Cruz Induced by the Loma Prieta Earthquake," 85th Annual Meeting of the Seismological Society of America, Santa Cruz, 1990
- "Improved Hillslope Stabilization with Biotechnical Methods," and "Case Histories of Biotechnical Repair," Biotechnical Slope Protection and Erosion Control Short Course, University of Michigan (Ann Arbor), 1990, 1991, 1992
- "Why a Geotechnical Engineer Should Use Soil Bioengineering," University of Wisconsin (Madison), National Technical Conference on Using Vegetation and Structures to Control Erosion, Protect Slopes, and Restore Environmental Quality, Berkeley, 1993
- "Debris Flow Stabilization Techniques in North America," International Sabo Symposium, Design of Resorts Exposition, Wakayama City, Japan, 1994
- "Hydrocompression - An Evaluation of Current Practice," Presented at "Fills in the Urban Environment: Design, Construction and Performance," American Society of Civil Engineers, National Convention, San Diego, 1995
- "California Landslides and Engineering Solutions," University of Wisconsin (Madison), National Short Course on Slope Stability and Landslides, San Francisco, 1996, 1997
- "Landslide Repair," Panel Presentation with Lee Abramson and Jeff Bachhuber, Geotechnical Group, San Francisco Section of the American Society of Civil Engineers, Oakland, October 1996
- "Characterizing and Mitigating Hill Slope Hazards," Panel Presentation with Jeff Bachhuber, Joel Baldwin, Bill Cotton, Keith

- Knudsen and J. David Rogers, Conference: El Niño – Bay Area Hazards and Opportunities, Association of Bay Area Governments, Oakland, December 1997
- "Forensic Geotechnical Engineering," Panel Presentation with Eugene Bass and J. David Rogers, Geotechnical Group, San Francisco Section of the American Society of Civil Engineers, Oakland, April 1998
- "Role of Geotechnical Consultants in Assessing Safety of Homes and Roads," Conference: El Niño – Storm Lessons Learned in the Bay Area, Association of Bay Area Governments, Oakland, June 1998
- "Landslide Case Histories" and "Data Sources for Landslide Studies," University of Wisconsin (Madison), National Short Course on Slope Stability and Landslides, Westwood Village, 2001, 2002, 2003
- "Field Investigations of Landslides" and "Debris Flows," University of Wisconsin (Madison), National Short Course on Slope Stability and Landslides, San Francisco Area (2004-2009, annually)
- "Engineer's Standard of Care," Liability and Loss Prevention Workshop, San Francisco ASCE Geotechnical Group, April 15, 2008
- "Bay Area GeoEngineering History Project," Co-Author with J. David Rogers, 26th GeoEngineering Lecture Series Dinner, May 9, 2008
- "Geotechnical Engineering 101: Defending a Soils Case," Co-Speaker with Sam Palmer, Litigating Construction Defect Claims in Nevada, State Bar of Nevada and Association of Defense Counsel of Northern California and Nevada, Reno, Nevada (October 9, 2008) and Las Vegas, Nevada (October 10, 2008)
- "Berkeley Hills Landslide-Induced Property Line Movement under Both Static and Earthquake Conditions" and "New Construction on Existing Landslides in Urban Areas Regulated by California Seismic Hazard Mapping Act," Co-Author with Wayne Magnusen, Third Conference on Earthquake Hazards in the Eastern San Francisco Bay Area, Hayward, California, October 22-26, 2008
- "Soil Conditions and Seismic Response of the Kathmandu Valley," Nepal Engineer's Association, Kathmandu, Nepal, November 11, 2008
- "La Conchita Landslide Risk Assessment", Co-Author with Laurie Johnson, Wayne Magnusen and Christopher Hitchcock, American Geophysical Union, Fall Meeting, December 10, 2009
- Invited Presentation: "Lateral Fill Extension" in session Titled "Laboratory Characterization of Soil Behavior for Application to Expansive Fill Slopes," American Society of Civil Engineers, National Geo-Congress – Stability and Performance of Slopes and Embankments III, San Diego, California, March 6, 2013
- "Geotechnical Observations and Considerations – Buildings Overlying Fault Rupture," Surface Fault Rupture – New Mitigation Concepts and Political Challenges, Los Angeles Section of the Association of Engineering Geologists, May 10, 2013
- "California Landslide Source Area Bio-Stabilization," 11th International Symposium on Mitigation of Geo-Disasters in Asia, Himalayan Landslide Society, Kathmandu, Nepal, October 26, 2013
- "Earthquake Preparedness," Safety Stand Down Fair, United States Navy, Naval Air Station North Island (Coronado), December 6, 2013
- "Source of Water Key to Understanding Landslide Causation," Co-Author with James Joyce and Jean Moran, 12th International Symposium on Geo-Disaster Reduction, Fullerton, California, September 6, 2014 (Selected as Outstanding Paper of Symposium)

Project No.
1806.000.000

September 9, 2015

Mr. Stuart Block
Stice & Block LLP
2335 Broadway, Suite 201
Oakland, CA 94612

Subject: 139 Lexford Road
Piedmont, California

GEOTECHNICAL CONSIDERATIONS FOR LOT DEVELOPMENT

- References:
1. Purcell, Rhoades & Associates; Phase I Geotechnical Study Update, Proposed Single Family Residence, 139 Lexford Road, Piedmont, California, August 27, 2015, Project No. 12-238/7673-01.
 2. Alan Kropp, Geotechnical Concerns, Proposed Ellwood Residence, 139 Lexford Road, Piedmont, California, December 4, 2007.
 3. Alan Kropp, Geotechnical Concerns, Proposed Ellwood Residence, 139 Lexford Road, Piedmont, California, March 27, 2006.
 4. ENGEO; Consultation Regarding Proposed Lot Development, Lot 139, Lexford Road, Piedmont, California, June 4, 1987.
 5. ENGEO; Soil Exploration, Lot 138, Lexford Road, Piedmont, California, March 3, 1982, Project No. N2-1806-B1.

Dear Mr. Block:

ENGEO has conducted specific studies on the proposed lot development at 139 Lexford Road in Piedmont, California dating back to 1982. We understand from discussions with you and review of available information, including Reference 1, that lot development is to include a multi-level single-family residence and will involve vertical cuts into the hillside up to 30 feet deep. As of this writing, we have not seen a specific excavation plan showing the actual location of the planned cuts or the associated earthwork.

The August 27, 2015, letter from Purcell, Rhoades & Associates (Reference 1) provides very little information regarding the actual methods planned for construction of shoring and permanent stabilization of the site. As a result, it is not possible at this time to analyze the effectiveness (or ineffectiveness) of these elements from an engineering perspective or the potential risks associated with their implementation. As stated below, these are important elements of the construction that should be considered and carefully vetted prior to project approval and commencement of any excavation work.

Stice & Block LLP
139 Lexford Road, Piedmont
GEOTECHNICAL CONSIDERATIONS FOR LOT DEVELOPMENT

1806.000.000
September 9, 2015
Page 2

We offer the following geotechnical considerations at this time:

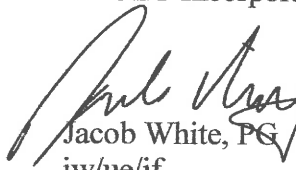
- We concur with the issues raised by Alan Kropp in References 2 and 3, specifically regarding the risk of landslides associated with the extensive bedrock excavation, especially during periods of heavy rains, and the impacts from the significant vibrations caused by the excavation work, trucks and related equipment. Each of these impacts is exacerbated by the fact that the work is planned in a fully built, mature neighborhood with the lot surrounded closely by occupied homes on all sides. The August 27, 2015, (Reference 1) letter from Purcell, Rhoades & Associates does not provide sufficient analysis to adequately address these concerns.
- Development plans should be rigorously reviewed by the geotechnical engineer-of-record as well as an experienced, independent reviewer. All excavations, shoring elements, and retaining walls should be engineered with consideration for seismic slope stability.
- The project construction, including all retaining wall structures, should be designed and constructed to the current California Building Code (CBC).
- The greatest risk for slope failure exists from commencement of the excavation work until the excavation is complete and the slope and site are fully stabilized. Prior to site grading at Lot 139, adequate bond amounts with the City should be secured to cover the costs of completing all shoring and stability elements and retaining wall construction necessary to permanently stabilize the excavations and hillside in the event the project is left incomplete.
- We understand that the development will not be permitted to tie back to the upslope property. Reference 1 indicates that the planned shoring method is "installation of piles reinforced with steel wide flange members along the upslope property line and upslope house wall." In our experience, this shoring method, applied in bedrock to a depth of up to 30 feet is very expensive.

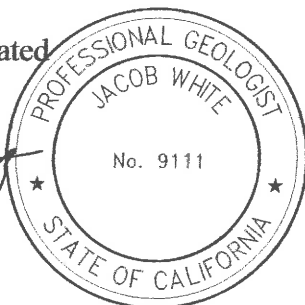
Under the present circumstances, the scale and method of the proposed excavation at 139 Lexford Road are unusual. Accordingly, the costs to complete the shoring and stability measures and the corresponding bond requirement should be carefully evaluated and secured prior to approval and commencement of work. Based on our experience, we would not be surprised to see the cost to fully implement a responsible excavation and stabilization plan for the existing conditions exceed \$500,000, perhaps significantly. Once we are provided with appropriate excavation and construction plans, we would be pleased to provide you with a cost estimate for the required work.

If you have any questions regarding the contents of this letter, please do not hesitate to contact us.

Sincerely,

ENGEO Incorporated


Jacob White, PG
jw/ue/jf



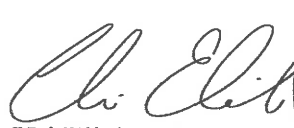

Uri Eliahu, GE



EXHIBIT B

PIEDMONT PLANNING COMMISSION**Regular Meeting Minutes for Monday, September 14, 2015**

A Regular Session of the Piedmont Planning Commission was held September 14, 2015, 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 August 31, 2015.

CALL TO ORDER

Commissioner Ode called the meeting to order at 5:05 p.m.

ROLL CALL

Present: Commissioners Philip Chase and Susan Ode, and Alternate Commissioner Eric Behrens

Absent: Commissioners Tony Theophilos and Tom Zhang (both excused)

Staff: Planning Director Kate Black, Senior Planner Kevin Jackson, Assistant Planners Jennifer Gavin and Emily Alvarez, Planning Technician Sunny Chao, and Assistant City Attorney Chad W. Herrington

Council Liaison: Councilmember Tim Rood

AGENDA AMENDMENT

Commissioner Ode announced that since Commission Chair Tony Theophilos is absent from the meeting and Vice Chair Louise Simpson recently resigned from the Planning Commission, the agenda must be amended to elect a Chair pro Tem for this meeting.

Resolution 18-PL-15

WHEREAS, the Planning Commission amends the agenda to elect a Chair pro Tem, pursuant to Government Code Section 54954.2(b)(2), making the following findings:

1. There is a need to take immediate action prior to the next regularly scheduled meeting; and
2. The need to take action came to the attention of the City after the posting of the agenda.

RESOLVED, that based on the findings set forth heretofore, the Piedmont Planning Commission amends the agenda to elect a Chair pro Tem, pursuant to Government Code Section 54954.2(b)(2).

Moved by Chase, Seconded by Behrens

Ayes: Behrens, Chase, Ode

Noes: None

Recused: None

Absent: Theophilos, Zhang

CHAIR PRO TEM**Resolution 19-PL-15**

RESOLVED, that the Planning Commission elects Commissioner Susan Ode as the Chair pro Tem for this meeting.

Moved by Chase, Seconded by Behrens

Ayes: Behrens, Chase, Ode

Noes: None

Recused: None

Absent: Theophilos, Zhang

APPROVAL OF MINUTES**Resolution 20-PL-15**

Planning Commission Minutes
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RESOLVED, that the Planning Commission approves as submitted its meeting minutes of the August 10, 2015, regular hearing of the Planning Commission.

Moved by Behrens, Seconded by Chase

Ayes: Behrens, Chase, Ode

Noes: None

Recused: None

Absent: Theophilos, Zhang

AGENDA ORDER

Chair pro Tem Ode announced that Staff has asked the Assistant City Attorney to be present during the discussion of Agenda Item #3, 139 Lexford Road. She explained that due to a prior commitment, he is not likely to be present at the start of the Regular Session. She asked the Commission to consider altering the agenda to postpone the hearing for Agenda Item #3 until the arrival of the Assistant City Attorney.

Resolution 21-PL-15

RESOLVED, that the Planning Commission approves to amend the order of the agenda, so that the Assistant City Attorney can be present during the discussion of Agenda Item #3.

Moved by Behrens, Seconded by Chase

Ayes: Behrens, Chase, Ode

Noes: None

Recused: None

Absent: Theophilos, Zhang

CONSENT CALENDAR

The Commission placed the following applications on the Consent Calendar and added Condition #5 to the approval of 97 Florada Avenue:

- 353 Hillside Avenue (Design Review)
- 1375 Grand Avenue (Conditional Use Permit)
- 97 Florada Avenue (Variance and Design Review)
- 55 Saint James Place (Variance and Design Review)
- 55 Sharon Avenue (Design Review and Fence Design Review)

Resolution 22-PL-15

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

Moved by Chase, Seconded by Behrens

Ayes: Behrens, Chase, Ode

Noes: None

Recused: None

Absent: Theophilos, Zhang

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

Design Review 353 Hillside Avenue

Resolution 267-DR-15

WHEREAS, the Property Owner is requesting permission to remodel and expand the existing 3,492-square-foot, 4-bedroom house by 1,052 square feet through: the construction of a two-story front addition with a new front entry, and a one-story rear basement addition with a main-level roof deck atop; the reconfiguration of the rear deck stairs; window, door and garage door modifications; new and replacement exterior light fixtures and guardrails; the

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construction of new free-standing walls in the side yards; the addition of decorative window grilles; various changes to the interior including the development of additional living space on the basement level; and hardscape changes in the front yard, located at 353 Hillside Avenue, Piedmont, California, which construction requires design review; and

WHEREAS, after reviewing the application, plans and any and all testimony and documentation submitted in connection with such application, and after having visited the subject property, the Piedmont Planning Commission finds that the project is categorically exempt under the California Environmental Quality Act, pursuant to Section 15301, Class 1(e) and the proposal conforms with the criteria and standards of Section 17.20.9 of the Piedmont City Code:

1. The exterior design elements are aesthetically pleasing as a whole and harmonious with existing and proposed neighborhood development. The distance between the addition and adjacent residences is reasonable and appropriate due to the existing topography and neighborhood development pattern. Upper level setbacks greater than the setbacks required for the lower level have been considered and are not necessary to reduce losses of ambient and reflected light, because the project will not significantly impact neighbors.
2. The proposed addition has been designed in a way that reasonably minimizes view and light impacts on neighboring properties, because the project does not appear to impact the neighbors.
3. The size and height of the addition is commensurate with the size of the lot (excluding the portions of the lot that cannot reasonably be built on), and is in keeping with the existing neighborhood development pattern, because some of the neighboring properties have similar improvements.
4. The safety of residents, pedestrians, and vehicle occupants and the free flow of vehicular traffic are not adversely affected, considering the circulation pattern, parking layout and points of ingress and egress. The existing or proposed on-site parking is appropriate to the size of the new additions, and additional parking is not required to prevent parking impacts on the neighborhood, because there is no change in the parking layout or ingress and egress of the property.
5. The project complies with Design Review Guidelines II-1, II-2, II-3, II-3(a), II-3(b), II-3(c), II-3(d), II-4, II-5, II-5(a), II-5(b), II-5(c), II-6, II-6(a), V-1, V-2, V-3, V-4, V-5, V-5(a), V-5(b), V-5(c), V-6, V-7, V-8, V-9, V-10, V-11.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review application for proposed construction at 353 Hillside Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

1. **Window and Door Material.** As specified in the plans, the building material for the new windows and doors shall be wood.
2. **Window Color Scheme.** All the windows on the house shall have a consistent color scheme.

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3. **Exterior Lighting.** As specified in the plans, all new exterior light fixtures shall be downward directed with an opaque or translucent shade that completely covers the light bulb.

4. **Garage Door.** As specified in the plans, the garage door shall be electronically operable. If design modifications are required to accomplish this, those modifications shall be subject to staff review.

5. **C&D Compliance.** Compliance with Chapter 9 Article III of the Municipal Code, which governs the recycling of construction and demolition debris, is required for all phases of this project.

6. **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.

7. **Final Landscape Plan for the Front Yard.** Before issuance of a building permit, the Property Owner shall submit for staff review and approval a Final Landscape Plan for the front yard. The final plan shall comply with Municipal Code Section 17.17.3, 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.

8. **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 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

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Regional Stormwater Permit are available from the Piedmont Public Works Department and on-line at cleanwaterprogram.org.

9. 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 complete of each phase.

a. The Construction Completion Schedule with associated construction values for each benchmark shall set forth completion dates for the following benchmarks:

- 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
- xi. 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 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 Property Owner's 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. If the work for any specific benchmark has not been completed within 90 days after the completion date set forth in the Approved Schedule, and the delay in completion has not been caused by force majeure, the Director of Public Works has the option at any time thereafter to 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 has the option to refer the application to the Planning Commission for public review.

Moved by Chase, Seconded by Behrens
Ayes: Behrens, Chase, Ode
Noes: None
Recused: None
Absent: Theophilos, Zhang

Conditional Use Permit Resolution 270-CUP-15

Planning Commission Minutes
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1375 Grand Avenue

WHEREAS, Tara Natural Medicine is requesting a Conditional Use Permit for a new natural medicine office, located at the existing commercial building at 1375 Grand Avenue, Piedmont, California; and

WHEREAS, the Piedmont Planning Commission has reviewed the application, the staff report, and any and all other documentation and testimony submitted in connection with the application and has visited the subject property; the Piedmont Planning Commission recommends that the project is categorically exempt under the California Environmental Quality Act, pursuant to Section 15301, Class 1(e) and the proposal conforms with the criteria and standards of Section 17.24.7 of the Piedmont City Code:

1. The proposed use is compatible with the General Plan and conforms to the zoning code, in that it's a natural medicine facility with support from a number of residents, and its impact on neighboring properties is no different than that from other businesses.
2. The use is primarily intended to serve Piedmont residents, in that the business is going to be much more accessible to Piedmont clientele.
3. The use will not have a material adverse effect on the health, safety or welfare of persons residing or working in the vicinity, in that the hours are reasonable and limited to normal working hours. There will be no significant noise impacts.

RESOLVED, that in consideration of the findings and facts set forth above, the Piedmont Planning Commission recommends approval by the City Council of the Conditional Use Permit application by Tara Natural Medicine at 1375 Grand Avenue, Piedmont, California, subject to the following conditions:

1. **Terms of the Approval.** A review of the conditional use permit shall occur in October 2017 and the conditional use permit shall have the following operational characteristics:

- a. **Office Hours: 8:00 a.m. to 6:00 p.m.; Monday through Friday; 9 a.m. to 2 p.m. Saturday; One evening a week until 7pm.**
- b. **Types of Staff/Personnel: 3-5 health professionals, 1-2 Office Assistants**

2. **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.

Moved by Behrens, Seconded by Chase
Ayes: Behrens, Chase, Ode
Noes: None
Recused: None

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Absent: Theophilos, Zhang

**Variance and
Design Review
97 Florada Avenue**

Resolution 273-V/DR-15

WHEREAS, the Property Owner is requesting permission to replace a trellis cover at the rear deck with a new shed roof, located at 97 Florada Avenue, Piedmont, California, which construction requires design review; and

WHEREAS, two variances from the requirements of Chapter 17 of the Piedmont City Code are necessary to construct within the 20-foot setbacks from the private roadway adjacent to the right and rear property lines; 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 Section 15301, Class 1(e); and

WHEREAS, with regard to variance, the Planning Commission finds that the proposal complies with the variance criteria under Section 17.21.6 of the Piedmont City Code:

1. The underlying lot and existing improvements present unusual physical circumstances, including but not limited to: the existence of a private road at the rear of the property, which requires a 20-foot setback, making such improvements impossible without a variance. Strictly applying the terms of this chapter would keep the property from being used in the same manner as other properties in the zone that conform to the zoning requirements.
2. The variance is compatible with the immediately surrounding neighborhood and the public welfare, because there will be no impact on the public welfare and the project will improve the compatibility of the house with the immediately surrounding neighborhood.
3. Accomplishing the improvements without variance would cause unreasonable hardship in planning, design, or construction, because, due to the 20-foot setback from the private road, the proposed roof replacement would be impossible without a variance.

WHEREAS, with regard to design review, the Planning Commission finds that the proposal conforms with the criteria and standards of Section 17.20.9 of the Piedmont City Code:

1. The 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: the fact that the existing, unsightly trellis will be replaced with a pitched roof to match the existing pitched roof on the main part of the residence.
2. The design is appropriate, considering its effect on neighboring properties' existing views, privacy and access to direct and indirect light, because there will be no impact.

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3. The safety of residents, pedestrians, and vehicle occupants and the free flow of vehicular traffic are not adversely affected, considering the circulation pattern, parking layout and points of ingress and egress, because there will be no impact.

4. The project complies with Design Review Guidelines II-1, II-2, II-3(a), II-3(b), II-3(c), II-3(d), II-4, II-5, II-5(a), II-6, II-6(a), II-6(b), II-6(c), II-7, II-7(a).

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the variance and design review application for proposed construction at 97 Florada Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

1. **Roof Color.** The color of the shingle on the new shed roof shall match the color of the shingles elsewhere on the house's roof.

2. **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.

3. **Setback from Property Line Verification.** Upon the request of the Chief Building Official and prior to frame inspection, the applicant shall submit written verification by a licensed land surveyor stating that the construction is located at the setback dimension from the northwest (right) and southwest (rear) property lines as shown on the approved plans. The intent is to verify that the approved features are constructed at the approved dimension from the property lines.

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

5. **Roof Design.** The northwest end of the shed roof shall be enclosed in a manner and material that is consistent with the gables elsewhere on the residence, subject to staff review and approval.

Moved by Chase, Seconded by Behrens

Ayes: Behrens, Chase, Ode

Noes: None

Recused: None

Absent: Theophilos, Zhang

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**Variance and
Design Review
55 Saint James Place**

Resolution 274-V/DR-15

WHEREAS, the Property Owner is requesting permission to reconfigure the front entry path and porch and install handrails along the path; install a guardrail atop the front retaining wall; and make various interior changes within the basement level including the addition of a fourth bedroom, located at 55 Saint James Place, Piedmont, California, which construction requires design review; and

WHEREAS, a variance from the requirements of Chapter 17 of the Piedmont City Code is necessary to increase the number of bedrooms to four without supplying the two required conforming parking spaces; 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 Section 15301, Class 1(e); and

WHEREAS, with regard to variance, the Planning Commission finds that the proposal complies with the variance criteria under Section 17.21.6 of the Piedmont City Code:

1. The underlying lot and existing improvements present unusual physical circumstances, including, but not limited to the fact that the property is a steep, downsloping, elbow-shaped lot. Strictly applying the terms of this chapter would keep the property from being used in the same manner as other properties in the zone that conform to the zoning requirements.
2. The variance is compatible with the immediately surrounding neighborhood and the public welfare, because there are other four-bedroom houses without conforming parking in the immediate neighborhood. Additionally, the residence is located on a cul-de-sac, and the proposal will not impact parking as much as it would on a well travelled thru street.
3. Accomplishing the improvements without variance would cause unreasonable hardship in planning, design, or construction, because it would be very difficult to put an extra garage anywhere on the property.

WHEREAS, with regard to design review, the Planning Commission finds that the proposal conforms with the criteria and standards of Section 17.20.9 of the Piedmont City Code:

1. The 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, the improved appearance of the entryway, which is much more compatible with the neighborhood than the existing entryway.
2. The design is appropriate, considering its effect on neighboring properties' existing views, privacy and access to direct and indirect light, because there will be no impact.

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3. The safety of residents, pedestrians, and vehicle occupants and the free flow of vehicular traffic are not adversely affected, considering the circulation pattern, parking layout and points of ingress and egress, because there will be no impact.

4. The project complies with Design Review Guidelines II-1, II-2, II-3(a), II-3(b), II-3(c), II-3(d), II-4, II-5, II-5(a), II-6, II-6(a), II-6(b), II-6(c), II-7, II-7(a).

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the variance and design review application for proposed construction at 55 Saint James Place, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

1. 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.

2. Encroachment Permit. Before the issuance of a building permit, the Property Owner shall apply for an encroachment permit to allow for the construction of the entry path and guardrail within the public right-of-way.

3. Final Landscape Plan. Before issuance of a building permit, the Property Owner shall submit for staff review and approval a Final Landscape Plan for the front yard. The final plan shall comply with Municipal Code Section 17.17.3, 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.

4. Construction Management Plan. The Property Owner shall develop a comprehensive Construction Management Plan. The Construction Management Plan shall address noise, vibrations, traffic control, parking, debris removal, dust control, sanitary facilities, site safety security 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

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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.

Moved by Behrens, Seconded by Chase
Ayes: Behrens, Chase, Ode
Noes: None
Recused: None
Absent: Theophilos, Zhang

**Design Review and
Fence Design Review
55 Sharon Avenue**

Resolution 279-DR-15

WHEREAS, the Property Owner is requesting permission to make several modifications to the rear yard including a new built-in barbeque, new and modified retaining walls, fence, and gates, located at 55 Sharon Avenue, Piedmont, California, which construction requires design review; and

WHEREAS, after reviewing the application, plans and any and all testimony and documentation submitted in connection with such application, and after having visited the subject property, the Piedmont Planning Commission finds that the project is categorically exempt under the California Environmental Quality Act, pursuant to Section 15301, Class 1(e) and the proposal conforms with the criteria and standards of Section 17.20.9 of the Piedmont City Code:

1. The 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, the fact that the proposed structure will be similar in appearance to the existing rock wall.
2. The design is appropriate, considering its effect on neighboring properties' existing views, privacy and access to direct and indirect light, because it cannot be seen from the neighbors' properties.
3. The safety of residents, pedestrians, and vehicle occupants and the free flow of vehicular traffic are not adversely affected, considering the circulation pattern, parking layout and points of ingress and egress, because the new structure will not impact the safety of residents, pedestrians, and vehicle occupants and the free flow of vehicular traffic.
4. The project complies with Design Review Guidelines II-1, II-2, II-3(a), II-3(b), II-3(c), II-3(d), II-4, II-5, II-5(a), II-6, II-6(a), II-6(b), II-6(c), II-7, II-7(a), V-1, V-2, V-3, V-4, V-5, V-5(a), V-5(b), V-5(c), V-6, V-7, V-8, V-9, V-10, V-11.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review application for proposed construction at 55 Sharon Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

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1. 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.

2. Encroachment Permit. Before the issuance of a building permit, the Property Owner shall apply for an encroachment permit to allow for the construction of the built in barbeque and retaining walls within the public right-of-way.

Moved by Chase, Seconded by Behrens
Ayes: Behrens, Chase, Ode
Noes: None
Recused: None
Absent: Theophilos, Zhang

PUBLIC FORUM

There were no speakers for the public forum.

AGENDA ORDER

The Assistant City Attorney arrived, and the Commission voted to resume the original order of the agenda.

Resolution 23-PL-15

RESOLVED, that the Planning Commission resumes the original order of the agenda.

Moved by Chase, Seconded by Behrens
Ayes: Behrens, Chase, Ode
Noes: None
Recused: None
Absent: Theophilos, Zhang

REGULAR CALENDAR

The Commission considered the following items of regular business:

New House Design Review 139 Lexford Road

The Property Owner is requesting permission to construct a new, approximately 4,437-square-foot, single-family residence on an existing vacant lot in Zone A. The new residence is proposed to be four levels with three bedrooms, two bathrooms, a half bath, a living room, dining room, kitchen, family room, office, laundry room, elevator, conforming two-car garage. A front terrace is proposed at the upper level and patios are proposed at the rear of the house. A landscape plan with retaining walls, stairs, walkways and exterior lighting is proposed.

Written notice was provided to neighbors. **Three affirmative and two negative response forms** were received. **Correspondence** was received from: Christopher Van Gundy, Stuart I. Block & Samantha Nobles-Block, Howard & Heidi Fields, Kevin Chen, Keri Elmquist, Jeanne and Mark Berres, Yi Zhang & Xiaoshan Cai.

Public testimony was received from:

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Leor Lakritz, Property Owner, spoke about the project and assured the Commission that he plans to do whatever it takes to keep his neighbors safe and to comply with the requirements of the building and planning departments.

Kirk Peterson, Project Architect, explained that the proposed design is the same design approved by the Commission in 2007. He discussed the challenges of the site and how the architecture of the proposed house responds to these challenges. He also outlined the attempts that the applicant made to discuss the project with the neighbors. In response to questions from Commissioner Chase, Mr. Peterson discussed the design of the elevator tower and agreed to add decorative windows to the tower.

Gene St. Onge, the Project Structural Engineer, discussed his experience with home construction throughout the hills and stated that the proposed house conforms to the topography better than most. He explained that the proposed retaining walls, at a maximum of about twelve feet tall, are less than half as high as the originally approved retaining walls. He added that the minor mudslides that currently occur on the site should be mitigated or eliminated by the proposed construction. In response to questions from the Commission, Mr. St. Onge explained that the site is made up of unusually hard rock at a shallow depth, and that heavier machinery and additional excavation efforts may be required at greater depths. He indicated that the project Soils Engineer would better address these matters.

Chris Van Gundy, neighbor at 132 Lexford Road, argued that proper studies should be conducted under the California Environmental Quality Act (CEQA) to determine the human and environmental impacts of constructing on a site with unusual circumstances. He acknowledged that the studies will not necessarily preclude construction on the site, but will inform the construction. He referenced three geotechnical reports conducted to date, and stated that the report by Alan Kropp identified a landslide danger on the site.

Alan Kropp, the neighbors' Geotechnical Consultant, explained that the hardness of the bedrock on site is very unusual. He expressed his concern that the excavation contractor may be unprepared for the hardness of the rock, and he stressed the importance of proper shoring to prevent the toppling or sliding of rock. He suggested that the project include specific criteria for hard rock drilling and excavation. Mr. Kropp answered questions from the Commission regarding ways to prevent the toppling and sliding of rock.

Samantha Nobles-Block and Stuart Block, neighbors at 87 Huntleigh Road, both spoke to express their concerns with the safety of the proposed excavation. They explained that their house is located downhill from the proposed project, and asked the Commission to ensure that all safety measures are taken during site excavation. Mr. Block suggested that the developer provide specific plans for temporary shoring and permanent slope stabilization on site, and that funds are in place to secure the project in the case that the excavation cannot be completed.

In response to Commissioners questions, Planning Director Black reported on the single-family construction project approvals that have taken place on steep lots within Piedmont and required extensive excavation in recent years. She discussed several of the conditions of approval that prior Planning Commissions

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and City Councils have developed for such sites to address the concerns related to their development, including: a condition that requires inspection of neighboring properties for excavation-related damage; conditions that require insurance to provide funds for securing an abandoned construction site; and a condition that requires the geotechnical engineer to sign-off on the shoring and excavation plans. Planning Director Black also discussed the review process for the engineering and geotechnical reports, which includes reviews by the City Engineer and Building Official, as well as a peer review by a third-party consultant. She also stated that the City has no records related to an apparent landslide on the property in the 1970s.

Assistant City Attorney Herrington discussed what to consider in determining whether a project is categorically exempt under CEQA. He explained that for the Commission to determine that a project does not fall under the categorical exemption of a single-family residence, it must find a feature or unusual circumstance of the site that distinguishes it from other projects in the exempt class and determine that there is a reasonable possibility of a significant impact resulting from the unusual circumstance. He also explained the type of evidence the Commission could look to when making this determination, including, whether properties with similar site conditions have been previously approved by the Commission under the same categorical exemption and whether the proposed project requires a variance.

The Commissioners discussed their views on whether the application should be subject to CEQA review and agreed that there was no evidence that the site conditions are significantly different than the site conditions of projects deemed categorically exempt from CEQA review. The Commission expressed confidence that the City Engineer and Building Official will carefully review all excavation plans for the project. The Commissioners unanimously supported the design of the project, stating that it would be an attractive addition to the neighborhood and that it is successful in preserving neighboring views. The Commissioners noted that, as requested, they visited the property at 145 Lexford Road and found no evidence that the proposed house would block the neighbor's view or light. Commissioner Chase noted the project meets the design review criteria, and objections mentioned by neighbors were construction related.

Resolution 129-NH DR-15

WHEREAS, the Property Owner is requesting permission to construct a new, approximately 4,437-square-foot, single-family residence on an existing vacant lot in Zone A. The new residence is proposed to be four levels with three bedrooms, two bathrooms, a half bath, a living room, dining room, kitchen, family room, office, laundry room, elevator, conforming two-car garage. A front terrace is proposed at the upper level and patios are proposed at the rear of the house. A landscape plan with retaining walls, stairs, walkways and exterior lighting is proposed, located at 139 Lexford Road, Piedmont, California, which construction requires design review; and

WHEREAS, after reviewing the application, plans and any and all testimony and documentation submitted in connection with such application, and after having visited the subject property, the Piedmont Planning Commission finds that the project is categorically exempt under the California Environmental Quality Act, pursuant to Section 15303, (a), making the following findings:

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1. There is no cumulative impact because the application proposes a single house on the lot and there is no reasonable probability of a significant effect on the environment;
2. The current application proposes a structure sited lower on the lot, with the majority of proposed excavation occurring on the lower portion of this lot. The amount of excavation has been reduced to 1,350 cubic yards from a previous proposal of 2,000 cubic yards that was not approved by the City Council;
3. Submitted geotechnical evidence indicates that the proposed lot has a rock base;
4. 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;
5. Based upon the submittals from the applicant's geotechnical expert, the site appears feasible for development, and that based on available data, there are no indications of Geotechnical hazards that would preclude the use of the site for development;
6. The project does not require the City to grant a variance. All features comply with the requirements set forth in the City's municipal code, which demonstrates that this project is not unique as compared to some other properties in the City, and that the underlying lot does not present any unusual physical characteristics that prevent the strict application of the City Code;
7. Among other Bay Area and Piedmont single-family developments, the City has previously approved numerous developments involving significant amounts of excavation, earth movement and retaining walls under a categorical exemption without an EIR including:
 - seven new single-family houses on steep vacant lots (53 Cambrian Avenue, 74 Huntleigh Road, 1 Maxwellton Road, 3 Maxwellton Road, 151 Maxwellton Road, 155 Maxwellton Road, and 14 Littlewood Drive);
 - seven projects involving the removal of all or a significant portion of an existing residence to be replaced by a new residence (62 Glen Alpine, 419 Hillside Court, 330 La Salle Avenue, 198 Maxwellton Road, 201 Park Way, 74 Sandringham Avenue, 505 Scenic Avenue);
 - ten projects with renovations to an existing residence or site (1454 and 1456 Grand Avenue, 218 Greenbank Avenue, 137 Greenbank Avenue, 212 Lafayette Avenue, 11 Muir Avenue, 77 and 79 Oakmont Avenue, 120 Requa Road, 213 Sunnyside Avenue); and
8. There is no substantial evidence that any exception to the Class 3 Categorical Exemption applies to this project, specifically including the unusual circumstances exception.

WHEREAS, with regard to design review, the Piedmont Planning Commission finds that the new house proposal conforms with the criteria and standards of Section 17.20.9 of the Piedmont City Code:

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1. The exterior design elements are aesthetically pleasing as a whole and harmonious with existing and proposed neighborhood development. The distance between the addition and adjacent residences is reasonable and appropriate due to the existing topography and neighborhood development pattern. Upper level setbacks greater than the setbacks required for the lower level have been considered and are not necessary to reduce losses of ambient and reflected light, because the decks and lower level roofs and staircases are appropriate.
2. The proposed addition has been designed in a way that reasonably minimizes view and light impacts on neighboring properties, because the structure has been designed to be nestled into the hillside to minimize view and light impacts on neighboring properties.
3. The size and height of the addition is commensurate with the size of the lot (excluding the portions of the lot that cannot reasonably be built on), and is in keeping with the existing neighborhood development pattern, because it has been designed to have a street-accessible driveway and has a unique architectural style that is in keeping with the neighborhood. The proposed house is similar in size to other houses in the neighborhood and is substantially below the maximum allowable floor area ratio.
4. The safety of residents, pedestrians, and vehicle occupants and the free flow of vehicular traffic are not adversely affected, considering the circulation pattern, parking layout and points of ingress and egress. The existing or proposed on-site parking is appropriate to the size of the new addition, and additional parking is not required to prevent unreasonable short and/or long term parking impacts on the neighborhood, because the proposed house has a code-compliant garage that is easily accessible and usable.
5. The project complies with Design Review Guidelines I-1(a), I-2(a), I-2(b), I-2(c), I-2(d), I-5, I-5(a), I-5(b), I-6, I-7, I-9, I-9(a), 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), IV-1, IV-1(a), IV-1(b), IV-2, IV-2(a), IV-3, IV-3(a), IV-5, IV-6, V-1, V-2, V-4, V-5, V-6, V-9.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review application for a new house at 139 Lexford Road, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

1. Foundation/Shoring/Excavation Plan [1]. The Property Owner shall submit grading, 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. The plans shall include the signature of the geotechnical engineer stating that they have reviewed the proposed plans and they find them in conformance with the recommendations of the various geotechnical reports for this project.

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

2. Neighboring Property Inspection [2]. 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 135 Lexford Road, 140 Lexford Road, 145 Lexford Road, 77 Huntleigh Road, 87 Huntleigh Road, 130 Somerset Road, 140 Somerset Road, 160 Somerset Road, & 170 Somerset 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.

3. Geotechnical Report and Review [3]. 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

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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.

4. Construction Management Plan [4]. 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 and other potential construction impacts, as well as other details involving the means and methods of completing the Project, including the construction route. The plan shall specify the sequencing of grading, excavation, shoring, foundation and construction activities. 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 [8]. 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. Prior to the issuance of a building permit, the Applicant shall submit a construction stormwater management plan prepared by a licensed Civil Engineer to achieve timely and defective 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 must 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.

b. Continual Street Access for Emergency Vehicles. The Construction Management Plan shall specifically address methods of providing continual street access for emergency vehicles at all times, which shall be subject to review and approval by the Fire Chief.

c. Haul routes shall be provided to the City for review and approval. To the extent possible, haul routes shall attempt to minimize or eliminate use of minor residential roadways. Street and pavement conditions shall be observed and documented by the City on all haul routes prior to commencement of construction.

5. Site Safety Security [5]. 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.

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- 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.

6. City Facilities Security [6]. 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 \$350,000 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.

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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.

7. Neighboring Property Damage Security [7]. The Applicant shall provide adequate and appropriate Insurance or bonds, as approved by the Director of Public Works and City Attorney against damage to neighboring properties at 135 Lexford Road, 140 Lexford Road, 145 Lexford Road, 77 Huntleigh Road, 87 Huntleigh Road, 130 Somerset Road, 140 Somerset Road, 160 Somerset Road, & 170 Somerset Road, by any construction, excavation, and related work in any way involving the project, such insurance or bonds to be in the amount of \$3,000,000.00 and with any conditions established by the Director of Public Works after consultation with the Applicant. If the Director of Public Works determines that obtaining any particular insurance would be extremely difficult for Applicant due to its lack of availability even at an increased cost, the Director of Public Works may authorize an alternative method of providing equal protection to neighboring properties, including but not limited to partial coverage by Umbrella Insurance if that appears appropriate. Such insurance or any alternative method shall allow for claims to be made for up to one year after the issuance of the Certificate of Occupancy on Applicant's project. Any and all such insurance or any alternative method shall specifically indicate that it covers damages to the above properties, and if such insurance is meant to also cover other potential damages, such as personal injuries or damages to other than the above named properties, any such further coverage shall be in addition to the \$3,000,000 earmarked for neighboring properties.

8. Contractor's General Liability Insurance [7]. 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

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occurrence. The insurance shall include an endorsement requiring notice to the City if the insurance is cancelled or changed, and Property Owner shall immediately arrange for substitute insurance coverage. 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.

9. Subsidence [9]. 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.

10. Construction Completion Schedule [11]. 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 complete of each phase.

a. The Construction Completion Schedule with associated construction values for each benchmark shall set forth completion dates for the following benchmarks:

- i. Completion of Excavation and Shoring;
- 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
- xi. 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 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 Property Owner's 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. If the work for any specific benchmark has not been completed within 90 days after the completion date set forth in the

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Approved Schedule, and the delay in completion has not been caused by force majeure, the Director of Public Works has the option at any time thereafter to 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 has the option to refer the application to the Planning Commission for public review.

11. Sound and Vibration Mitigation Plan and Review [12]. 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.

12. Modifications to Conditions [13]. 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.

13. Dedication of Funds [14]. All funds or financial vehicles set forth in any of the above conditions shall be earmarked or dedicated so that they are not subject to creditors claims.

14. City Attorney Cost Recovery [15]. 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.

15. Consultant Cost Recovery [16]. 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 \$10,000 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.

16. Errors and Omissions Insurance [17]. 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, and the City of Piedmont shall be named as an additional insured on such insurance coverage.

17. Approved Plan Set. The approved plans are those submitted on April 9, 2015, with additional information submitted June 10th, June 16th, and July 2nd, 2015, after notices to neighbors were mailed and the application was available for public review.

18. 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.

19. C&D Compliance. Compliance with Chapter 9 Article III of the Municipal Code, which governs the recycling of construction and demolition debris, is required for all phases of this project.

20. 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 southeastern property line adjacent to 145 Lexford Road and the northern property line adjacent to 130 and 140 Somerset Road 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).

21. 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

22. 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.

23. California's Water Efficient Landscape Ordinance: Unless exempt, the property Owner shall comply with the requirements of California's Model Water Efficient Landscape Ordinance in effect at the time of building permit submittal, 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).

24. City Easement. City records indicate that a City sewer main and associated easement abut the east property line of this project and are located near the proposed construction. The applicant shall work with City staff to verify the location and depth of the sewer main. In addition, the City shall videotape the existing sanitary sewer main to assess its pre-construction condition in order to make a determination as to whether any repairs to or replacement of the sewer main is required prior to the commencement of excavation and/or construction. (The City is responsible for the cost of the main line, and the property owner for costs of the lateral.) As part of the final inspection the same sanitary sewer lines shall be inspected as required by the Director of Public Works, who shall also determine if the sewer line was damaged as a result of the construction and therefore must be repaired at the applicant's expense. The applicant is responsible to locate their private sewer lateral and note such location on the building permit drawings.

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

26. **Sidewalk.** The applicant shall be responsible for installation of sidewalk fronting the entire project. Sidewalk construction shall be per City standards.

27. **Driveway.** The applicant shall be responsible for installation of a driveway for the property. The portion of the driveway within City right-of-way shall be constructed per City Standards.

28. **Right-of-Way.** Any work within the City's right-of-way will require obtaining an encroachment permit prior to commencement of work.

29. **Elevator Tower.** The elevator tower shall be provided with additional faux windows, recesses, decorative vents, or other elaborations that break up the massing of the tower and provide visual interest. Said modifications shall be subject to staff review and approval.

Moved by Chase, Seconded by Behrens

Ayes: Behrens, Chase, Ode

Noes: None

Recused: None

Absent: Theophilos, Zhang

The Commission recessed for dinner at 6:35 p.m. and reconvened at 7:10 p.m.

**Design Review
256 Wildwood Avenue**

The Property Owner is requesting permission to make various modifications at the rear of the property, including to remodel an existing upper level addition; remodel an existing upper level deck; construct a new lower level addition; and make modifications to windows and doors throughout the house.

Written notice was provided to neighbors. **Two affirmative response forms** were received.

Public testimony was received from:

Dan Hano, Project Architect, described the project and explained that the new addition and deck will be more consistent with the design of the original house. In response to questions from the Commission, Mr. Hano explained that the existing driveway is extremely narrow and unsafe, that it cannot be expanded due to the location of the property line and existing house, and that it is proposed to remain as is. Mr. Hano also answered questions about the proposed spiral staircase and the proposed French doors.

The Commission was unanimously in support of the application, stating that the proposed addition and deck was an improvement over the existing addition and deck.

Resolution 276-DR-15

WHEREAS, the Property Owner is requesting permission to make various modifications at the rear of the property, including to remodel an existing upper level addition; remodel an existing upper level deck; construct a new lower level addition; and make modifications to windows and doors throughout the house,

located at 256 Wildwood Avenue, Piedmont, California, which construction requires design review; and

WHEREAS, after reviewing the application, plans and any and all testimony and documentation submitted in connection with such application, and after having visited the subject property, the Piedmont Planning Commission finds that the project is categorically exempt under the California Environmental Quality Act, pursuant to Section 15301, Class 1(e) and the proposal conforms with the criteria and standards of Section 17.20.9 of the Piedmont City Code:

1. The exterior design elements are aesthetically pleasing as a whole and harmonious with existing and proposed neighborhood development. The distance between the addition and adjacent residences is reasonable and appropriate due to the existing topography and neighborhood development pattern. Upper level setbacks greater than the setbacks required for the lower level have been considered and are not necessary to reduce losses of ambient and reflected light. The proposed redesign is an improvement over the existing design and is harmonious with the neighborhood.
2. The remodel has been designed in a way that reasonably minimizes view and light impacts on neighboring properties, because the new addition is in the same location as the existing addition and is only slightly higher than the existing addition.
3. The size and height of the addition is commensurate with the size of the lot (excluding the portions of the lot that cannot reasonably be built on), and is in keeping with the existing neighborhood development pattern, because many neighboring houses are built on narrow lots.
4. The safety of residents, pedestrians, and vehicle occupants and the free flow of vehicular traffic are not adversely affected, considering the circulation pattern, parking layout and points of ingress and egress. The existing or proposed on-site parking is appropriate to the size of the new remodeling, and additional parking is not required to prevent unreasonable short and/or long term parking impacts on the neighborhood, because there is no change to the existing parking and no increase in the number of bedrooms on the property.
5. The project complies with Design Review Guidelines II-1, II-2, II-3(a), II-3(b), II-3(c), II-3(d), II-5, II-5(a), II-6, II-6(a), II-6(b), II-6(c), II-7, II-7(a).

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review application for proposed construction at 256 Wildwood Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

1. **Window and Door Material.** As specified in the plans, the building material for the new windows and doors shall be fiberglass with a wood trim and sill.
2. **Window Color Scheme.** All the windows on the house shall have a consistent color scheme.

3. **C&D Compliance.** Compliance with Chapter 9 Article III of the Municipal Code, which governs the recycling of construction and demolition debris, is required for all phases of this project.

4. **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.

5. **Door Design.** The new French doors on the east facade of the house at the Recreation Room on the basement level shall be modified so that it is not necessary to have a landing in the driveway that would impede vehicular access to the garage subject to Staff review and approval.

6. **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 required by a Certified Tree Preservation Plan. The final plan shall comply with Municipal Code Section 17.17.3, 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.

7. **Environmental Hazards.** Prior to the issuance of a building permit as required by the Chief Building Official, the applicant shall provide a plan, including necessary testing, to verify compliance with all local, state and federal regulations regarding the disturbance and removal of hazardous materials (if any) on residential properties and/or in the proximity of schools, including lead-based paint and asbestos. Said plan for the proper removal and handling of hazardous materials shall be provided on the appropriate sheets of the construction plan sets and included in the Construction Management Plan.

8. **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.

9. **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 west property line as shown on the approved plans. The intent is to verify that the approved features are constructed at the approved dimension from the property line(s).

10. **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 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.

11. 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 complete of each phase.

a. The Construction Completion Schedule with associated construction values for each benchmark shall set forth completion dates for the following benchmarks:

- 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
- xi. 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 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 Property Owner's 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. If the work for any specific benchmark has not been completed within 90 days after the completion date set forth in the Approved Schedule, and the delay in completion has not been caused by force majeure, the Director of Public Works has the option at any

time thereafter to 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 has the option to refer the application to the Planning Commission for public review.

Moved by Behrens, Seconded by Chase
Ayes: Behrens, Chase, Ode
Noes: None
Recused: None
Absent: Theophilos, Zhang

**New House
Design Review
206 Crocker Avenue**

The Property Owner is requesting permission to demolish the existing house, pool, and other site features, and construct a new, 1,895-square-foot, two-story, two-bedroom house with a two-car garage at the lower level, and make site changes including alterations to the grading, new short and tall retaining walls, and new exterior lighting. A comprehensive landscape plan has been submitted, and Fence Design Review is required for alterations to the existing wall at the front of the property.

Written notice was provided to neighbors. **One affirmative response form and one response form indicating no position** were received. **Correspondence** was received from: Robert Davis and John Chiang.

Public testimony was received from:

Dr. Katie Rodan, Property Owner of both 200 Crocker Avenue and 206 Crocker Avenue, described the application. She explained that the new house at 206 Crocker Avenue is in keeping with the historic Julia Morgan house at 200 Crocker Avenue, and that a large shared yard is proposed between the properties. She added that the project is completely code-compliant and considerate of the adjacent neighbor's privacy and access to light.

Stephen Sooter, Project Architect, explained that the intent of the project is to rejoin the two properties, create a large yard, and construct a new house that incorporates the architectural features of the main house at 200 Crocker Avenue. He explained the siting of the new house and how it relates to the adjacent house at 210 Crocker Avenue. He described numerous proposed architectural details, and outlined the changes to the grade that are proposed as part of the landscape plan. Mr. Sooter presented a drawing showing an alternative wall treatment that would provide additional architectural interest for the south wall of the new house, and he expressed willingness to add architectural detailing where necessary to break up the massing of the new house.

In response to questions from the Commission, Dr. Rodan and Mr. Sooter both expressed willingness to remove the portion of the proposed fence that is directly adjacent to the neighbor's porte cochere. Mr. Sooter also agreed to increase the spacing of the proposed hedge in this area. Dr. Rodan and Mr. Sooter both discussed the options for the roofing material of the new house and the main house, and indicated that they would like the roof of the new house and the main house to match. Mr. Sooter expressed reluctance to move or rotate the house, because it would impact the proposed garden and further impact the privacy of the neighbor at 210 Crocker Avenue.

Robert Davis, neighbor at 210 Crocker Avenue, discussed the architectural importance of both his home and the house at 200 Crocker Avenue. He

expressed concern that the new house at 206 Crocker Avenue would obstruct his light and views and would impact his privacy. He was in favor of removing the proposed fence directly adjacent to the porte cochere, but asked that it also be removed west of the porte cochere. He explained that the new house would be less obtrusive if it were relocated in a north/south orientation at the front or back of the property. He expressed support for the architectural detail that Mr. Sooter discussed. Mr. Davis also expressed his opinion that the three houses should all have tile roofs. In response to questions from the Commission, Mr. Davis further described the impacts that the project would have on his light, view and privacy.

The Commissioners commended Mr. Sooter for a well thought-out design that is in keeping with the architecture of the main house at 200 Crocker Avenue, and they were in favor of the additional wall articulation that was presented during the meeting by Mr. Sooter. However, they were concerned about the impact that the proposed house would have on the adjacent historic house at 210 Crocker Avenue. Commissioner Chase expressed concern that the adjacent house would experience a loss of light, views, and privacy. He discussed several design alternatives to lessen these impacts, including reorienting the structure, moving it further north, lowering its elevation, and limiting it to one story. He was in favor of a redesign that would lessen the impact while retaining the architectural integrity. Commissioner Behrens expressed some concern for the impacts that the new house had on the adjacent neighbor, but was not in favor of drastic design changes. Chair pro Tem Ode stated that she was not ready to approve the project as presented due to the impact on the adjacent neighbor, but expressed support for moving the proposed house further north and lowering it. In response to questions from the Commission, Mr. Sooter confirmed that the house could be lowered a couple of feet and still be at street level. The Commissioners were in support of eliminating the fence along the neighbor's porte cochere and discontinuing the wall to the west of it.

Resolution 277-NH DR-15

WHEREAS, the Property Owner is requesting permission to demolish the existing house, pool and other site features, and construct a new, 1,895-square foot, two-story, 2-bedroom house with a two-car garage at the lower level, and make site changes including alterations to the grading, new short and tall retaining walls, and new exterior lighting. A comprehensive landscape plan has been submitted, and Fence Design Review is required for alterations to the existing wall at the front of the property, located at 206 Crocker Avenue, Piedmont, California, which construction requires design review; and

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

1. Although, the exterior design elements are aesthetically pleasing as a whole and harmonious with existing and proposed neighborhood development, the distance between the new house and adjacent residences is unreasonable and inappropriate due to the existing topography and neighborhood development pattern and impact on neighbors.
2. The proposed addition has been designed in such a way that unreasonably impacts the view and light of neighboring properties. Although the neighboring

house is not impacted by shade from the proposed house, it is impacted by a loss of light coming from above the roof of 200 Crocker Avenue.

3. The size and height of the new house is commensurate with the size of the lot, but its siting is not appropriate.

4. The safety of residents, pedestrians, and vehicle occupants and the free flow of vehicular traffic are not adversely affected under this proposal. The existing or proposed on-site parking is appropriate to the size of the new house, and additional parking is not required to prevent unreasonable short and/or long term parking impacts on the neighborhood, because it has the required number of off-street parking spaces with very straightforward access.

5. The project does not comply with Design Review Guidelines I-2(d) and I-7.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission denies, without prejudice, the design review application for proposed construction at 206 Crocker Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City.

Moved by Chase, Seconded by Behrens

Ayes: Behrens, Chase, Ode

Noes: None

Recused: None

Absent: Theophilus, Zhang

Variance and Design Review 570 Scenic Avenue

The Property Owner is seeking retroactive approval for various hardscape and site structure modifications including a new deck, patio, stairs, and lattice cladding over the existing retaining wall in the rear (west) yard and a new landing structure, stairs, and handrails in the side (north and south) yards. The applicant also requests Design Review to modify the design of the fence enclosing the southwest corner of the rear yard patio and abutting the property of 153 Bell Avenue. Three variances are required for exceeding the structure coverage and hardscape surface coverage limits of the lot, and for constructing within the right (north) side yard setback.

Written notice was provided to neighbors. **One affirmative response form** was received. **Correspondence** was received from: Cynthia Karasik.

Public testimony was received from:

Sam Katzen, Project Developer, explained that the goal of the project was to make the outdoor space more usable. He stated that he did not realize that the work required design review until after it was constructed. Mr. Katzen also explained the need for the variances and described the lattice that has been applied to the wall. In response to a question from Commissioner Behrens, Mr. Katzen confirmed that the fence will not be extended beyond the proposed location.

The Commission expressed regret that the application required retroactive approval, but was supportive of the design and variances. Commissioner Chase argued that the property is significantly smaller than the other properties in the neighborhood, and that the variances are justified, so that the applicant has the same design flexibility as others in the neighborhood. The Commissioners agreed that the project improves the property and makes it more usable. Chair pro Tem Ode expressed her opinion that the applicant could remove the stone

paved patio to reduce the need for an impervious surface variance, but ultimately agreed that the variances are justified and that the proposed design is approvable.

Resolution 278-V/DR-15

WHEREAS, the Property Owner is seeking retroactive approval for various hardscape and site structure modifications including a new deck, patio, stairs, and lattice cladding over the existing retaining wall in the rear (west) yard and a new landing structure, stairs, and handrails in the side (north and south) yards. The applicant also requests Design Review to modify the design of the fence enclosing the southwest corner of the rear yard patio (and abutting the property of 153 Bell Avenue), located at 570 Scenic Avenue, Piedmont, California, which construction requires design review; and

WHEREAS, three variances from the requirements of Chapter 17 of the Piedmont City Code are necessary to exceed the structure coverage and hardscape surface coverage limits of the lot, and for constructing within the right (north) side yard setback; and

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

WHEREAS, with regard to variance, the Planning Commission finds that the proposal complies with the variance criteria under Section 17.21.6 of the Piedmont City Code:

1. The underlying lot and existing improvements present unusual physical circumstances, including but not limited to: the very small size of the property, especially in relation to other properties in the neighborhood, and the insignificance of the changes. Strictly applying the terms of this chapter would keep the property from being used in the same manner as other properties in the zone that conform to the zoning requirements.
2. The variance is compatible with the immediately surrounding neighborhood and the public welfare, because the project makes the property more compatible with the neighboring properties.
3. Accomplishing the improvements without variance would cause unreasonable hardship in planning, design, or construction, because the improvements would otherwise not be possible, given the small size of the property.

WHEREAS, with regard to design review, the Planning Commission finds that the proposal conforms with the criteria and standards of Section 17.20.9 of the Piedmont City Code:

1. The 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, the fact that some of the existing hardscape has been covered to improve the appearance of the property. Additionally, the proposed materials are of good quality.

2. The design is appropriate, considering its effect on neighboring properties' existing views, privacy and access to direct and indirect light, because there is no impact.

3. The safety of residents, pedestrians, and vehicle occupants and the free flow of vehicular traffic are not adversely affected, considering the circulation pattern, parking layout and points of ingress and egress, because there is no impact.

4. The project complies with Design Review Guidelines II-1, II-2, II-3(a), II-3(b), II-3(c), II-3(d), II-6(b), IV-2, IV-2(a), IV-3, IV-3(a), V-1, V-2, V-5, V-5(a), V-5(b), V-5(c), V-6, V-7, V-8, V-9, V-10.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the variance and design review application for proposed construction at 570 Scenic Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

1. Defense of Legal Challenges. 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.

2. Setback from Property Line Verification. The applicant shall submit to the Building Official written verification by a licensed land surveyor stating that the construction of the new landing structure located at the setback dimension from the north property line as shown on the approved plans. The intent is to verify that the approved features are constructed at the approved dimension from the property line.

Moved by Behrens, Seconded by Chase

Ayes: Behrens, Chase, Ode

Noes: None

Recused: None

Absent: Theophilos, Zhang

ADJOURNMENT

There being no further business, Chair pro Tem Ode adjourned the meeting at 9:20 p.m.

EXHIBIT C

SETTLEMENT AGREEMENT AND FULL RELEASE

This Settlement Agreement and Full Release (this "**Agreement**") is made and entered into this 28th day of March, 2016 (the "**Date of Agreement**"), by and among Christopher Van Gundy ("**Van Gundy**"), the City of Piedmont ("**City**"), and Lakritz Family Partnership L.P. ("**Lakritz**"). Van Gundy, City, and Lakritz are sometimes hereinafter collectively referred to as the "**Parties**" or individually as a "**Party**".

RECITALS

Lakritz submitted Application Number 15-0129 (the "**Application**") to City to develop an approximately 4,437 square foot single-family residence located at 139 Lexford Road, Piedmont, California (the "**Project**"). On September 14, 2015, the City Planning Commission approved the Application with Conditions of Approval (the "**Conditions of Approval**"), finding the Project exempt from the California Environmental Quality Act ("**CEQA**") under the Class 3 categorical exemption for "new construction of small structures." On October 19, 2015, City denied Van Gundy's appeal of the Planning Commission's approval.

On October 29, 2015, Lakritz filed a Notice of Exemption with the Alameda County Clerk, File No. 15-382. On December 3, 2015, Van Gundy filed and subsequently effected service on Lakritz and City of a Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief in the Superior Court of the State of California, County of Alameda, Case No. RG15795423 (the "**Litigation**"), challenging City's determination the Project was exempt from CEQA.

City and Lakritz filed timely responsive pleadings.

City and Lakritz deny there has been any violation of CEQA or other applicable laws in connection with City's approval of the Project. The Parties, however, have concluded a settlement of the claims asserted by Van Gundy is in their best interest in consideration of the cost and risk associated with prosecution and defense of the claims. The Parties have negotiated in good faith and hereby agree to extinguish any and all claims of the Parties, known or unknown, against City and Lakritz, or any other entity, known or unknown, arising out of, or relating to the Litigation, and the Parties agree, for valuable consideration, that all claims, potential counterclaims, demands, causes of action, and affirmative defenses, of whatsoever nature, between them concerning the Litigation shall be settled hereby.

NOW, THEREFORE, in consideration of the covenants, promises, and agreements set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which the Parties accept and acknowledge, the Parties agree as follows:

1. **Ratification.** The Parties ratify all of the foregoing recitals and incorporate them as material provisions of this Agreement.
2. **Modification of the Conditions of Approval.** Project Condition of Approval No. 12 provides that any insurance or security requirement, or other related Condition of Approval, may be 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 of Approval. The Parties agree that the modification of the Conditions of Approval Nos. 1, 2, 3, 4, 5, and 7 as set forth in this Agreement have been modified in a reasonable manner with the joint agreement of the Director of Public Works and the City Attorney and are consistent with the intent of the Conditions of Approvals as originally imposed by the City. The Parties warrant, agree, and covenant to comply with the Conditions of Approval, as modified by this Agreement. Except as expressly modified below, including any subsections, the Conditions of Approval for the Project shall remain in full force and effect.

- a. Condition of Approval No. 1 is hereby modified and restated as follows:

1. **Foundation/Shoring/Excavation Plan [1].** The Property Owner shall submit grading, 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 the recommendations of the Property Owner's geotechnical engineer and to the extent feasible, the City's geotechnical consultant, and shall be subject to approval by the City Engineer and the Chief Building Official. The plans shall include the signatures of the Property Owner's geotechnical engineer and the City's geotechnical consultant, certifying that they have reviewed the proposed plans and they find them in conformance with the recommendations of the various geotechnical reports for this project. Within 10 days of Property Owner's submission of the plans, the property owners of the properties listed in Condition of Approval No. 2 (the "**Neighboring Property Owners**") shall have the opportunity to provide their comments on any grading, foundation, excavation, and shoring plans to the City's geotechnical consultant before the geotechnical engineer certifications are provided.

- b. Condition of Approval No. 2 is hereby modified to add 132 Lexford Road to the list of neighboring homes.

- c. Condition of Approval No. 3 is hereby modified and restated as follows:

3. **Geotechnical Report and Review [3].** 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, shoring requirements, permanent site stabilization, and other related items involving the Project.

- a. **Peer Review.** The City, at the Property Owner's sole expense, shall retain Alan Kropp as 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. Mr. Kropp's services shall be provided for the sole benefit of the City and

whose reports and recommendations can be relied upon only by the City. Mr. Kropp 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 Mr. Kropp deems necessary. The Property Owner shall provide payment for this at the time of the Building Permit submittal. Mr. Kropp shall provide the Neighboring Property Owners with limited necessary status reports as the Foundation/Shoring/Excavation Plan progresses. Except for these status reports, the Property Owner will not pay for consultation between Mr. Kropp and the Neighboring Property Owners, and Mr. Kropp shall provide the Property Owner and City with all reports and correspondence among Mr. Kropp and the Neighboring Property Owners.

Before visiting the Project site, Mr. Kropp must provide Lakritz reasonable notice and evidence of professional liability insurance covering Mr. Kropp and naming Lakritz as an additional insured. Lakritz will not be liable for any acts or omissions of Mr. Kropp or any of his representatives.

If Mr. Kropp is or becomes unable to serve as the independent geotechnical consultant for the Project, Van Gundy may nominate an alternative independent geotechnical consultant for the Project, subject to Lakritz's and City's approval. Lakritz and City will not unreasonably withhold or delay their approval of Van Gundy's nominee.

d. Condition of Approval No. 4 is hereby modified and restated as follows:

4. Construction Management Plan [4]. 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 and other potential construction impacts, as well as other details involving the means and methods of completing the Project, including the construction route and the days and hours permitted for heavy excavation. Outside construction involving high levels of noise, including excavation, hammering, and tile sawing, shall be limited to Monday through Saturday, from 8:30 a.m. to 4:30 p.m. Construction personnel shall be instructed not to park in front of 132 Lexford Road. The plan shall specify the sequencing of grading, excavation, shoring, foundation and construction activities. The City Building Official may require modifications and amendments to the Construction Management Plan throughout the course of the Project and until the Final Inspection.

e. Subsection (c) of Condition No. 4 is hereby modified and restated as follows:

c. Haul routes shall be provided to the City for review and approval. To the extent possible, haul routes shall attempt to minimize or eliminate

use of minor residential roadways. Street and pavement conditions shall be observed and documented by the City on all haul routes prior to commencement of construction. Damage or observable and unusual wear and tear to haul routes on Hampton Road and Lexford Road as specified by the City shall be repaired at the Property Owner's expense after Final Inspection.

f. Condition of Approval No. 5 is hereby modified and restated as follows:

5. **Site Safety Security [5].** 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 to the City a specific cash deposit, letter of credit, bank guarantee, or other similar financial vehicle ("Site Safety Security") in the amount of \$200,000 to stabilize the foundation of the Project to ensure the Project site is not left in a dangerous or unfinished state, and if any funds are remaining, to landscape for aesthetic purposes. City shall release such security to Lakritz at the time it issues the first certificate of occupancy for the Project, which may be a temporary, partial or final certificate of occupancy.

g. Condition of Approval No. 7 is hereby modified to add 132 Lexford Road to the list of neighboring properties.

3. **No Further Approvals; Statute of Limitations.** Pursuant to City Municipal Code section 17.20.4(a)(xxii) and Condition of Approval No. 12, the modifications to the Conditions of Approval are by agreement only and do not require any additional hearings or approvals by City, except City's approval of this Agreement. The Parties do not intend to toll any applicable statute of limitations or waive any statute-of-limitations defense.

4. **Payment of Costs.** Within ten days of the Date of Agreement, Lakritz will pay Van Gundy \$5,000 for costs associated with opposition to the Project.

5. **Release of City and Lakritz.** Van Gundy, as of the Date of Agreement, fully and finally releases, remises, acquits, and forever discharges City and Lakritz, and each of their parents, affiliates, subsidiaries, past and present, as well as their successors, assigns, managers, partners, officers, directors, and legal representatives from any and all claims, rights, or causes of action, disputes, damages, losses, injuries, debts, accounts, demands, grievances, controversies, suits and actions, whether known or unknown, foreseen or unforeseen, of whatsoever kind or nature, whether at law, in equity or otherwise, whenever and wherever arising for, upon, by reason of, on account of or arising out of or in any way relating to the Litigation, including, without limitation, the City's approvals of the Project. Van Gundy agrees to dismiss the Litigation, without prejudice, within five days of the Date of Agreement.

6. **Release of Van Gundy.** City and Lakritz, as of the Date of Agreement, fully and finally release, remise, acquit, and forever discharge Van Gundy, his spouse, children, family members, estate, as well as his successors, assigns, managers, partners, officers, directors, and

legal representatives from any and all claims, rights, or causes of action, disputes, damages, losses, injuries, debts, accounts, demands, grievances, controversies, suits and actions, whether known or unknown, foreseen or unforeseen, of whatsoever kind or nature, whether at law, in equity or otherwise, whenever and wherever arising for, upon, by reason of, on account of or arising out of or in any way relating to the Litigation.

7. **No Further Opposition to the Project.** Van Gundy shall not oppose or interfere with, or encourage or assist any other person or entity to oppose or interfere with any federal, state, local, or other permit or approval related to the Project. Other than for purposes of ensuring compliance with this Agreement and the Conditions of Approval, Van Gundy shall not hinder or challenge the Project or encourage or assist any other person or entity to hinder or challenge the Project in any way.

8. **Enforcement.** Notwithstanding any other provision of this Agreement, this Agreement does not release or bar suit to enforce compliance with the Conditions of Approval or this Agreement, and the Parties agree Van Gundy may call Baird Holm LLP to resolve any issues of noncompliance, for example, loud outdoor construction on Sundays or construction personnel parking in front of 132 Lexford Road, in violation of Condition of Approval No. 4. The Parties agree legal damages for material breaches of this Agreement are difficult to quantify, and in an action to enforce this Agreement, the Parties agree a court may order specific performance of this Agreement and compliance with the Conditions of Approval, as modified by this Agreement.

9. **Knowing and Voluntary.** This Agreement is fair and reasonable and knowingly and voluntarily executed by each Party. In entering into this Agreement, each Party has undertaken such factual inquiry as it has deemed necessary and has relied solely on that inquiry and not on statements or representations of the other Parties. Each Party has had its attorney review this Agreement or has voluntarily waived such right.

10. **No Representations or Warranties.** No Party makes any representations or warranties other than as set forth in this Agreement to induce the other Parties to enter into this Agreement. The Parties acknowledge and agree no promise, inducement, or agreement not expressed in this Agreement has been made to them.

11. **Successors and Assigns.** This Agreement shall be binding on the Parties and their successors and assigns.

12. **Entire Agreement; Amendments.** The Parties represent and warrant: they have read this Agreement and fully understand its terms; they execute this Agreement of their own free will without reliance on any representation of any kind or character not expressly set forth in this Agreement; this Agreement is a fair and reasonable resolution of the disputes between them and is not made for any improper purpose; and this Agreement contains the entire final agreement among the Parties. There are no oral agreements among the Parties. No Party may modify, waive, amend, or add any provision of this Agreement except by a writing signed by all the Parties.

13. **Counterparts; Execution.** This Agreement may be executed in any number of

counterparts, and each such counterpart shall be deemed to be an original instrument, and all such counterparts together shall constitute one agreement. The Parties may rely on facsimile or electronic copies of signatures for the purposes of final execution of this Agreement.

14. **Descriptive Headings.** Descriptive headings in this Agreement are for convenience only and shall not control or affect the meaningful construction of any provision of this Agreement.

15. **Construction.** Capitalized terms used in this Agreement have the meanings given them in this Agreement.

16. **Governing Law.** California law shall govern this Agreement, including its construction and interpretation. If any action is brought as a result of a breach of this Agreement, such action shall be brought in the state courts of California.

17. **Authorized Signature.** By signing below, each Party represents and warrants that he or she is authorized to sign on behalf of the individual, corporation, partnership, limited liability company, or other entity signing below.

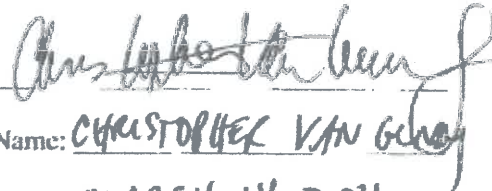
18. **City Council of Piedmont.** The Parties acknowledge that the City Council of Piedmont is not a separate entity apart from the City, and that the City Council of Piedmont was improperly named as a respondent and defendant in the Litigation.

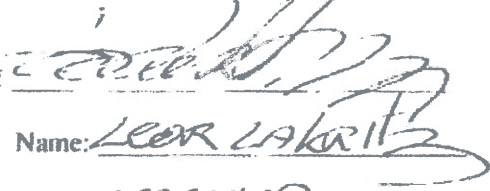
[NO FURTHER TEXT ON THIS PAGE]

[Signature Page to Settlement Agreement]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Date of Agreement.

CHRISTOPHER VAN GUNDY**LAKRITZ FAMILY PARTNERSHIP LP**

By: 
Name: CHRISTOPHER VAN GUNDY
Date: MARCH 14, 2016

By: 
Name: LEOR LAKRITZ
Title: MANAGER
Date: 3-9-2016

CITY OF PIEDMONT:

By: 
Margaret Pupoka, Mayor
Date: 3-14-16

By: 
Chester Nakahara, Director of Public Works
Date: 28 MAR 2016

Approved as to Form:

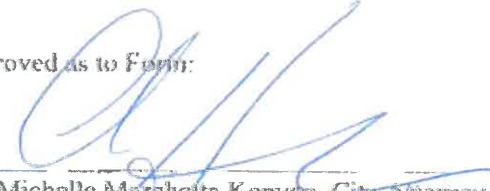
By: 
Michelle Marchetta Kenyon, City Attorney
Chad Herrington, Assistant City Attorney

EXHIBIT D

139 Lexford Conditions of Approval Comparison: 2007-2024

All approvals were for a four-level, 3 bedroom 2 bath single family residence on the vacant lot at 139 Lexford Road.

Condition	2007 Approval		2015 Approval*		2017 Approval		2024 Approval	
	#	Amount or Condition	#	Amount or Condition	#	Amount or Condition	#	Amount or Condition
Neighboring Property Inspection	2	Inspection of surrounding properties required prior to construction	2	Inspection of surrounding properties required prior to construction	2	Inspection of surrounding properties required prior to construction	N/A	OMITTED
Neighboring Property Damage Security	7	\$3,000,000	7	\$3,000,000	7	\$3,000,000	N/A	OMITTED
Site Safety Security Bond/ Performance Bond	5	Performance bond of reasonable expected costs to complete the project, with a 25% additional amount over the total anticipated costs	5	\$200,000	5	\$200,000	25	\$15,000
City Facilities Security	6	\$350,000	6	\$350,000	6	\$350,000	22	\$100,000

**As amended by the 2016 lawsuit settlement*

EXHIBIT E

PIEDMONT PLANNING COMMISSION

Regular Meeting Minutes for Monday December 10, 2007

A Regular Session of the Piedmont Planning Commission was held December 10, 2007, 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, 2007.

CALL TO ORDER

Chairman Thiel called the meeting to order at 5:00 p.m. He announced that Planning Technician Sharon Lai is leaving Piedmont for new opportunities in San Francisco and on behalf of the Commission thanked Ms. Lai for her outstanding service in the planning department during the last two years. The Chairman then welcomed new Planning Technician Gabe Baracker.

ROLL CALL

Present: Commissioners Jonathan Levine, Bobbe Stehr, Clark Thiel and Alternate Commissioner Michael Henn

Absent: Commissioners Jim Kellogg and Melanie Robertson (excused)

Staff: City Planner Kate Black, Assistant Planner Kevin Jackson, Planning Technicians Sharon Lai, Sylvia Toruno and Gabe Baracker and Recording Secretary Chris Harbert

City Council Liaison: Mayor Nancy McEnroe

CONSENT CALENDAR

The following Resolution was approved under one vote by the Commission:

Fence Design Review 135 Monticello Avenue

Resolution 433-DR-07

WHEREAS, Ms. Amy Simon is requesting permission to modify an existing fence and add a new gate along the right (south) side of the property located at 135 Monticello Avenue, Piedmont, California, which construction requires design review; and

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

1. The exterior design elements (including but 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) are aesthetically pleasing as a whole and harmonious with existing and proposed neighborhood development in that: it provides a safety gate for owners, children and a significant improvement to the existing fence.
2. The design is appropriate, considering its effect on neighboring properties' existing views, privacy and access to direct and indirect light because there is no adverse impact. If anything, the project will improve the property value and aesthetics.

3. The safety of residents, pedestrians, and vehicle occupants and the free flow of vehicular traffic are not adversely affected, considering the circulation pattern, parking layout and points of ingress and egress because it does not interfere in any way.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review application of Ms. Simon for construction at 135 Monticello Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

1. The approved plans are those submitted on November 29, 2007, after neighbors were notified of the project and the plans were available for public review;
2. The height of the new fence will be the same as the height of the existing fence and not the 6 ft. height shown on submitted plans.

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

Moved by Henn, Seconded by Levine

Ayes: Levine, Stehr, Thiel, Henn

Noes: None

Absent: Kellogg, Robertson

PUBLIC FORUM

There were no speakers for the public forum.

APPROVAL OF MINUTES

Resolution 28-PL-07

RESOLVED, that the Planning Commission approves as submitted its meeting minutes of November 13, 2007.

Moved by Stehr, Seconded by Levine

Ayes: Levine, Stehr

Noes: None

Abstain: Thiel

Absent: Kellogg, Robertson

REGULAR CALENDAR

The Commission considered the following items of regular business:

New House Design Review 139 Lexford Road

Mr. Patrick Ellwood is requesting new house design review to construct a new, approximately 4,573 sq. ft. single family residence on the existing vacant lot at 139 Lexford Road. The new residence is proposed to be four levels with three bedrooms, two bathrooms, a half bath, a living room, dining room, kitchen, family room, office, laundry room, elevator, conforming 2-car garage and exterior lighting. A landscape plan with retaining walls, stairs and walkways is proposed.

A similar application was approved by the Commission on February 13, 2006 and again on appeal by the City Council on April 3, 2006.

Written notice was provided to neighbors. **Three affirmative and ten negative response forms** were received. **Correspondence** was received from: Christopher Van Gundy, Nov. 29; David Bowie, Dec. 4 & 6.

Public testimony was received from:

Kirk Peterson, Project Architect, stated that the current application proposes no significant changes to the design approved by the Commission/Council in February/April 2006, with the exception of a 429 sq. ft. expansion of the master bedroom and bath. He stressed that there are no exterior changes to the design or in the amount of excavation proposed from the plan previously approved. He noted that the additional excavation required for the master bedroom expansion is being off-set by a revised foundation method (slab on grade) which results in less excavation than originally anticipated – so overall, the amount of excavation remains the same as proposed in the previous approval. He also emphasized that the proposed project is not unique in scale or construction from many other homes built in the Oakland/Berkeley/Piedmont hill areas.

David Bowie, Attorney for the applicant, reiterated that the current application essentially proposes the same house as approved by the Commission and City Council in February/April of last year. The reason for the current submittal is that because of other pressing business matters, Mr. Ellwood was not prepared to pull his building permit for the 2006 approval in time to allow planning staff sufficient time to process the application before the time deadline expired.

Curtis Jensen, Applicant's Geotechnical Engineer, reviewed the site conditions of the property, stressing that it is a very stable site. However, he acknowledged that while the excavation process will be noisy and vibration unavoidable, neighbor impacts will be mitigated as set forth in the project's construction management plan and project approval conditions. He was confident that with proper shoring, the proposed construction will pose minimal risks to neighboring properties.

Alan Kropp, Geotechnical Engineer retained by Messrs. Sherman and Van Gundy, agreed that the proposed construction is possible, albeit very challenging and difficult and stated that if the shoring is not properly done, there could be adverse impact on neighboring properties.

Christopher Van Gundy reiterated his and his neighbor's concern that the difficult site conditions and unforeseen circumstances justify requiring a CEQA Initial Study in this case. He submitted photographs of the site in relation to neighboring properties, noted the neighborhood's concern/confusion over whether Mr. Ellwood intends to sell the property once his application is approved and stressed the expense neighbors have incurred in opposing this project and insuring that proper protections are in place if the project proceeds. He requested that if the current application is approved, the same

conditions imposed on the previous application be required and that the City reimburse neighbors for the expenses incurred in opposing this project. Mr. Van Gundy also relayed his belief that the proposed design of the house is too massive, not well integrated with adjacent homes and out of character with the neighborhood.

Robert Scherman emphasized the expense he has incurred since 2000 in opposing this project and voiced his concern that this project will drag on and on with a new applicant if Mr. Ellwood sells the property.

Jeanne Berres, the uphill neighbor, emphasized her concern that the proposed excavation and location of the new home so close to the rear property line will threaten the stability of the hillside and her residence. She reiterated her prior comments regarding concern over her personal and property safety, requested that if approved, all the original conditions of project approval be required and that the amount of the required bonds protecting neighborhood properties be increased since property values have escalated since 2000.

The Commission emphasized that project opponents have not presented any new evidence or arguments, either in terms of CEQA or project construction/design that were not thoroughly examined and considered in February/April 2006 when the project was approved. The Commission acknowledged that the current application is essentially the same project that was previously approved by the Commission and City Council last year.

Resolution 29-PL-07

RESOLVED, that the Planning Commission determines that the current application for proposed construction on 139 Lexford Road qualifies for the Class 3 Categorical Exemption that applies to most single family construction projects in California, finding that:

- there is no cumulative impact because the application proposes a single house on the lot and there is no reasonable probability of a significant effect on the environment;
- the current application proposes a structure sited lower on the lot, with the majority of proposed excavation occurring on the lower portion of this lot. The amount of excavation has been reduced by approximately 40% from that previously proposed (which was not approved by the City Council);
- submitted geotechnical evidence indicates that the proposed lot has a rock base;
- 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.

Moved by Levine, Seconded by Stehr

Ayes: Levine, Stehr, Thiel

Noes: None

Absent: Kellogg, Robertson

Resolution 347-DR-07

WHEREAS, Mr. Patrick Ellwood is requesting permission to construct a new, approximately 4,573 sq. ft. single family residence, consisting of four levels with three bedrooms, two bathrooms, a half bath, a living room, dining room, kitchen, family room, office, laundry room, elevator, conforming 2-car garage and exterior lighting. A landscape plan with retaining walls, stairs and walkways is proposed located at 139 Lexford Road, Piedmont, California, which construction requires design review; and

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

1. The exterior design elements (including but 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) are aesthetically pleasing as a whole and harmonious with existing and proposed neighborhood development in that it complies with Design Review Guidelines I-1(a), I-1(c), I-2 and I-5. The proposed design is appropriate and consistent with homes in Piedmont, is articulated to reduce the mass, is sited on the lot to be consistent with the neighborhood, is stepped into the hillside and its materials and detailing are typical of many neighborhood homes.
2. The design is appropriate, considering its effect on neighboring properties' existing views, privacy and access to direct and indirect light because it is well situated and proportioned to neighborhood development patterns. It is stepped up the hill to minimize impact on neighbor views and will prevent any effects on light concerning the neighbors. It maintains the view of the neighboring property on top of the hillside.
3. The safety of residents, pedestrians, and vehicle occupants and the free flow of vehicular traffic are not adversely affected, considering the circulation pattern, parking layout and points of ingress and egress. Pedestrian safety will be improved by the adding of a retaining wall and the placement of the new driveway to the right which is well spaced from adjacent driveways.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review application of Mr. Ellwood for construction at 139 Lexford Road, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

1. A foundation plan, and an excavation and shoring plan shall be developed by a structural engineer, at the Applicant's cost, and said plans shall address issues of site shoring, fencing and hillside security issues. Said plans shall be based on not trespassing or intruding into neighboring properties, and causing no subsidence or other damage to such neighboring

properties, and shall be approved by the City Engineer and the City Building Official. Such plans shall be based on the recommendations of the project geotechnical engineer and the City's geotechnical consultant.

2. A structural engineer chosen by the City shall inspect neighboring homes and retaining walls with regard to any possible damage that may be caused by vibrations or other factors due to excavation, construction or other activities on Applicant's property, and such inspection shall include both foundations and non-foundation related details (walls, windows, general overall condition, etc.) at the Applicant's cost and at a level of inspection City Staff deems appropriate. Such inspection shall only include readily visible and accessible areas of such neighboring homes, shall be made with the intent of establishing base-line information to later be used in determining damage caused by any activities on Applicant's property, and shall only take place with the permission of the homeowner as to such homeowner's home and property. The specifics of each such inspection shall be agreed to between such City-selected structural engineer and the City staff. The structural engineer shall provide a full report to City of his conclusions, and such report shall 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 at the Applicant's cost.

- (a). Within 45 days after the Certificate of Occupancy is issued on Applicant's property the same structural engineer chosen by the City or a substitute structural engineer chosen by the City shall inspect the same exact areas 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 Applicant's property, including any photographic evidence, diagrams or the like that would document such apparent damage. Such Report may be used in connection with claims pursuant to Condition 7 hereafter.

3. A geotechnical report shall be submitted that will assess the existing site conditions. An independent geotechnical consultant shall be retained by the City at the sole expense of the Applicant to review the geotechnical report and advise the City in connection with the excavation, retaining wall systems, foundations and their construction, and other related items involving Applicant's property. Such independent geotechnical consultant shall review the building plans during the permit approval process, and shall provide periodic on-site observation during excavation and construction of the foundations. The City Engineer shall select an appropriate independent geotechnical consultant.

4. A comprehensive Construction Management Plan shall be developed by the City on the project, after receiving an initial draft from the Applicant, and after development of such Plan, the City Building Official shall have the authority to require amendments to the Construction Management Plan, as he deems necessary, throughout the course of the project until the final issuance of a Certificate of Occupancy. The Construction Management Plan shall address noise, vibrations, traffic control, parking, debris removal, and other construction impacts, as well as numerous other details involving the construction project.
5. A performance bond or other financial vehicle, shall be required from Applicant to ensure the completion of the full construction of the house, including foundation and landscaping, all based on the plans approved by the City. Such bond or other financial vehicle shall be determined by the Director of Public Works in the form of a cash deposit, bond, or other financial vehicle that will absolutely ensure completion of the entire project, with the final amount and type and exact terms of the financial vehicle to be determined by the Director of Public Works after consultation with the Applicant. Such amount shall not only include all reasonable expected costs to complete the project, but a 25% additional amount over the total anticipated costs to cover unexpected expenditures, particularly in light of the difficulty in excavating and preparing the foundation for the project. An estimator shall be retained by the City (at Applicant's sole expense) to estimate the total costs of such project, and as the project proceeds if costs to complete the project may increase beyond the original estimate made by the estimator, based on a later evaluation by the estimator, City may require the Applicant to increase the amount of the cash deposit, bond or other financial vehicle by such additional amount plus 25%, and Applicant shall provide City with written evidence of completion of such increase within 15 working days after receiving written notice thereof from City. Such cash deposit, bond or other financial vehicle shall not be released until the entire project has been "finaled" as complete by the Chief Building Official.
6. Based on the City's independent Geotechnical Engineer's review of the Applicant's geotechnical report, a specific cash deposit or bond shall be made by the Applicant in the amount of \$350,000.00, to cover the cost of any damages to City property or facilities in any way caused by Applicant, Applicant's agents or assigns, including but not limited to any of Applicant's contractors, subcontractors or their employees and agents, relating to the project, the terms of such cash deposit or bond to be determined by the Director of Public Works after consultation with the Applicant.
 - a. To provide clear baseline information to determine whether damage is called by the Applicant or others working for or on behalf of Applicant on this Project, specifically relating to damage to Lexford Road and

- other city streets to be used by trucks, vehicles, and other equipment involving the Project, City will video all the streets to be used by such trucks, vehicles, and other equipment to determine the baseline condition of such streets, and shall further re-video the streets every two weeks after the Project commences until all of the excavation and foundation work have been fully completed. As part of such videoing, City may possibly hose or water down the streets to better emphasize any cracks or damage in the surface thereof. The full cost of all such videoing and related work shall be reimbursed to the City by Applicant within 21 days after receiving written notification of the work performed and the amount to be reimbursed.
- b. No double trailers shall be used as part of the Project, particularly relating to removal of rocks and debris, to reduce potential damage to the streets and to avoid traffic hazards on the narrow curving city streets.
7. The Applicant shall provide adequate and appropriate Insurance or bonds, as approved by the Director of Public Works against damage to neighboring properties at 135 Lexford Road, 140 Lexford Road, 145 Lexford Road, 77 Huntleigh Road, 87 Huntleigh Road, 130 Somerset Road, 140 Somerset Road, 160 Somerset Road, & 170 Somerset Road, by any construction, excavation, and related work in any way involving the project, such insurance or bonds to be in the amount of \$3,000,000.00 and with any conditions established by the Director of Public Works after consultation with the Applicant. If the Director of Public Works determines that obtaining any particular insurance would be extremely difficult for Applicant due to its lack of availability even at an increased cost, the Director of Public Works may authorize an alternative method of providing equal protection to neighboring properties, including but not limited to partial coverage by Umbrella Insurance if that appears appropriate. Such insurance or any alternative method shall allow for claims to be made for up to one year after the issuance of the Certificate of Occupancy on Applicant's project. Any and all such insurance shall specifically indicate that it covers damages to the above properties, and if such insurance is meant to also cover other potential damages, such as personal injuries or damages to other than the above named properties, any such further coverage shall be in addition to the \$3,000,000 earmarked for neighboring properties.
8. Implementation of stormwater treatment Best Management Practices (BMPs) as well as Bay Area Stormwater Management Agencies Association's Start at the Source criteria for stormwater quality protection is required. Requirements shall be made by City Staff involving storm water pollution prevention during construction, as well as final drainage erosion control, and these items will be reviewed as part of the Construction Management Plan.

9. Applicant shall provide a written guaranty signed by Applicant, Applicant's general contractor, and Applicant's structural engineer that there will be no subsidence or erosion to any neighboring properties caused in any way by Applicant's excavation, construction or any other activities relating to such project, and acknowledging that all work may be immediately stopped by City in the event of such subsidence or erosion until the City Engineer can be fully reassured that no further subsidence or erosion will occur from such neighboring properties. As an alternative, Applicant may post a cash bond or similar financial vehicle acceptable to the Director of Public Works that will provide sufficient funds that will be immediately available to remedy any subsidence or erosion that may occur on neighboring properties in an amount to be determined by the Director of Public Works, but which will not be less than \$500,000.00. Such written guaranty, cash bond or similar financial vehicle shall not be released until the entire Project has been completed and "finalized" by the Chief Building Official.
10. The funds provided under Conditions 5, 6, and 9 hereof shall be provided to City upon demand without City having to prove in any way that such funds are required, either for completion of the project under Condition 5 or for damages to City property or facilities under Condition 6 or for repairs or remedies to subsidence or erosion under Condition 9, other than the determination of the Director of Public Works that they are needed and the amount that is needed.
11. Work on the project shall take place with continuous, good faith, reasonable progress. Since timely completion of this project is of the essence, the Applicant shall submit for approval a Construction Completion Schedule, which will specify, in detail, the duration and percentage complete of each subcontract and phase during any given week of the construction schedule.
 - a. Such Construction Completion Schedule shall set forth completion dates for the following milestones or benchmarks:
 1. Completion of Excavation;
 2. Completion of Rear Retaining Walls;
 3. Completion of Foundation;
 4. Completion of Rough Framing;
 5. Completion of Electrical;
 6. Completion of Plumbing;
 7. Completion of Mechanical;
 8. Completion of Fire Sprinklers;
 9. Completion of Home;
 10. Completion of Landscaping;

and of any final Conditions of occupancy, meaning completion of the entire Project.

- b. The City shall have an independent professional review the completion dates proposed by Applicant in 11a. above, and to the extent such completion dates are unrealistically long for the work to be accomplished, shall suggest a reasonable completion date for that milestone or benchmark. The Director of Public Works shall make a final determination on the reasonable completion dates that shall apply to the Project before the Project commences, and such determination shall be binding on the Applicant.
 - c. If any work has not been completed for a specific milestone or benchmark as set forth in 11a. above by the date finally determined by the Director of Public Works, such work still has not been completed 90 days after such completion date, and the delay in completion has not been caused by an Act of God, the Director of Public Works shall have the option at any time thereafter to make claim against the funds to be provided pursuant to Condition 5 in order to complete such milestone or benchmark.
- 12. Based on the results of the geotechnical report, an acoustical engineer may be required by Director of Public Works, at the applicant's expense to monitor the vibration and decibel levels of the project, including being periodically present at the construction site during excavation and foundation work, and based on such monitoring will be able to stop work when it becomes, in the opinion of such engineer, excessive.
- 13. Any financial vehicles or related conditions in the list of options may be modified in a reasonable manner with the joint agreement of the Public Works Director and the City Attorney, provided that such modifications must carry out the general intent of each such condition.
- 14. All funds or financial vehicles set forth in any of the above conditions shall be earmarked or dedicated so that they are not subject to creditors claims.
- 15. Applicant shall make a cash deposit with the City prior to commencement of construction in the amount of \$25,000.00 to be used to offset time and expenses of City Staff relating to the Project, any amounts remaining to be refunded to the Applicant within 90 days after the Project has been "finalized" by the Chief Building Official. If such cash deposit has been reduced to \$2,500.00 or less at any time, the Director of Public Works shall have the authority to require additional funds to be deposited by Applicant covering any further estimated Staff time and expenses.
- 16. Applicant shall make a cash deposit with the City prior to commencement of construction in the amount of \$28,500.00 to be used to pay for the fees and expenses relating to the

professionals called for in other Conditions, including but not limited to Conditions 1, 2, 3, 6, 7, 11, and 12 hereof, or in any way otherwise required to be expended by the City for professional assistance (other than City Staff) relating to the Project, such funds to be expended at the discretion of the Director of Public Works. If such cash deposit has been reduced to \$2,500.00 or less at any time, the Director of Public Works shall have the authority to require additional funds to be deposited by Applicant covering any further estimated fees and expenses of professionals. Any amount remaining unexpended shall be refunded to the Applicant within 90 days after the Project is "finaled" by the Chief Building Official.

17. Notwithstanding any other condition hereof, any structural engineer, soils engineer, geotechnical engineer or other engineer or professional consultant 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, and the City of Piedmont shall be named as an additional insured on such insurance coverage.
18. Applicant to obtain encroachment permits from the City and other agencies prior to issuance of any building permits.

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

Moved by Levine, Seconded by Stehr

Ayes: Levine, Stehr, Thiel, Henn

Noes: None

Absent: Kellogg, Robertson

**Variance and
Design Review
324 Pacific Avenue**

Mr. August Moretti and Ms. Audrey Kavka are requesting variance and design review for retroactive approval for features of a prior application constructed at the rear of the house and within a setback and to make modifications to the previously constructed addition, including replacing windows and changing the exterior wall material. The requested variance is from Section 17.10.7 to allow the 1989 approved construction to be 2 ft. from the left side yard property line in lieu of the 1989 approved variance which permitted the construction to be 3 ft. from the side yard property line.

Written notice was provided to neighbors. **Three affirmative response forms** were received. **Correspondence** was received from: Lisa & Scott Lawson, Aug. 29; Bill & Adair Langston, Sept. 8; Robert & Patricia Netsch, Sept. 30;

Public testimony was received from:

August Moretti stated that the addition in question was constructed and approved by the City in 1989-90, without a survey, and there have been no changes to this addition since that time. The plans and construction were based upon the location of a fence that was believed to be on the property line. However, it was recently discovered that the property line is not on the fence line, hence the 1989-90 addition was actually constructed 2 ft. from the property line, rather than the 3 ft. shown on the plans and approved by the City. Mr. Moretti noted that it would be an extreme hardship to remove and relocate his addition 1 foot further from the property line, emphasizing that he acted in good faith in 1989-90 and believed that his submitted plans were accurate. He also noted that in 1989-90 the adjacent neighbor did not oppose the addition and that this addition was in place when his new neighbors purchased their property.

Gary Parsons and Cecil Lee, Project Architect and Contractor, stated that to comply with the fire safety rating requirements of the Uniform Building Code, the application proposes to install fire rated materials in the addition walls and windows located within the setback.

The Commission agreed that the applicant acted in good faith in 1989-90, the misidentification of the property line location was an honest mistake and it would be unreasonable to require construction which was approved by the City and which has existed for nearly 18 years to be removed/relocated because of an inadvertent error. The Commission agreed that the current application does not impose any additional impact on adjacent neighbors.

Resolution 350-V-07

WHEREAS, Mr. August Moretti and Ms. Audrey Kavka are requesting retroactive approval for features of a prior application constructed at the rear of the house and within a setback and to make modifications to the previously constructed addition, including replacing windows and changing the exterior wall material to construct located at 324 Pacific Avenue, Piedmont, California, which construction requires variance; and

WHEREAS, a variance from the requirements of Chapter 17 of the Piedmont City Code is necessary in order to construct within the left (east) side yard setback; and

WHEREAS, after reviewing the application, plans and any and all testimony and documentation submitted in connection with such application, and after having visited subject property, the Piedmont Planning Commission makes the following findings:

1. The underlying lot and existing improvements present unusual physical circumstances, including but not limited to the fact that an error in property line location was made nearly 20 years ago. Because

of these circumstances, strictly applying the terms of this chapter would keep the property from being used in the same manner as other properties in the zone which conform to the zoning requirements.

2. The variance is compatible with the immediately surrounding neighborhood and the public welfare because the addition was constructed in accordance with submitted plans and City approvals nearly 20 years ago. The current application addresses the fact that the property line was not actually located where it was believed to be 20 years ago. Past experience has indicated that property line locations in this area of Piedmont are not easily identified/known.

3. Accomplishing the improvement without a variance would cause unreasonable hardship in planning, design, or construction because it would require the removal of an addition that was found to meet City requirements at the time of the application and construction.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the variance application of Mr. Moretti and Ms. Kavka for the above variance at 324 Pacific Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City.

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

Moved by Stehr, Seconded by Levine

Ayes: Levine, Stehr, Thiel, Henn

Noes: None

Absent: Kellogg, Robertson

Resolution 350-DR-07

WHEREAS, Mr. August Moretti and Ms. Audrey Kavka are requesting retroactive approval for features of a prior application constructed at the rear of the house and within a setback and to make modifications to the previously constructed addition, including replacing windows and changing the exterior wall material to construct located at 324 Pacific Avenue, Piedmont, California, which construction requires design review; and

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

1. The exterior design elements (including but 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) are aesthetically pleasing as a whole and harmonious with existing and proposed neighborhood development. The project complies with Design Review Guidelines II-3, II-3(b), (c) and (d) in terms of scale, mass, architectural style and exterior material compatibility. The proposed windows are compatible with the existing style of the house and the addition is well integrated with the home.

2. The design is appropriate, considering its effect on neighboring properties' existing views, privacy and access to direct and indirect light. The project complies with Design Review Guidelines II-6, II-6(a) and (b), II-7 and II-7(a) in terms of the addition's siting in relation to other residences along the street and the windows respect the visual and acoustical privacy of neighbors and complied with City requirements at the time of construction.

3. The safety of residents, pedestrians, and vehicle occupants and the free flow of vehicular traffic are not adversely affected, considering the circulation pattern, parking layout and points of ingress and egress because there is no change in existing circulation patterns.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review application of Mr. Moretti and Ms. Kavka for construction at 324 Pacific Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following condition:

- The color of the new windows shall match that of the remaining existing windows

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

Moved by Stehr, Seconded by Levine

Ayes: Levine, Stehr, Thiel, Henn

Noes: None

Absent: Kellogg, Robertson

**Variance, Design
Review & Fence
Design Review
100 Indian Road**

Mr. and Mrs. Stephen Block are requesting variance, design review and fence design review to increase the height of the fence along the south property line and make modifications to the guest house, including: new windows on the south façade; new exterior lighting on the north façade; a new air conditioning unit in the courtyard between the main house and guest house; and various interior changes including the addition of a room eligible for use as a bedroom. The requested variance is from Section 17.16 in order to have a residence with 9

rooms eligible for use as a bedroom with 4 conforming parking spaces in lieu of the code required minimum of 5 conforming parking spaces.

Written notice was provided to neighbors. **Two affirmative and one negative response forms** were received. **Correspondence** was received from: David Stein, Dec. 6; Margaret Thomas, Dec. 1; Stephen Block, Nov. 26.

Public testimony was received from:

Bennett Christopherson, Project Architect, stated that the only exterior changes to the existing guest house involve three new windows at the rear and the extension in height of a portion of an existing fence. He stated that there is ample off-street parking on the property (at least 8 spaces) although not all of these spaces are conforming per code because the existing garage doors restrict parking ingress/egress to some of these spaces. However, these garage doors are architecturally historic in style and enhance the aesthetics of the property.

David Stein stated that he has withdrawn his objection to the project based upon Mr. Block's agreement to move the fence so that it is entirely on the Block's property. He did not object to the 8 ft. height of the fence, agreeing that it will provide privacy to both himself and the applicants.

Dale Block described the proposed improvements to the existing guest house so that it will be suitable for habitation by her mother. She also noted that ivy is growing up on the fence to an 8 ft. height at its highest point and that mesh was added to a section of this chain link fence so that the ivy hedge will be uniform in height. This ivy wall restores privacy lost as a result of the removal of a grove of trees.

Stephen Block noted that while the existing guest house is a legal second unit, he has no intention of ever renting this unit so he has officially revoked its status as a second unit per a *Declaration of Abandonment*, dated November 26, 2007, submitted to the City.

The Commission agreed that there is ample, screened on-site parking on the property, even if some of it is technically non-conforming by code. The Commission further agreed that the 8 ft. fence height is appropriate to screen a shared driveway and provide privacy for the applicant; the fence height does not impact neighboring property.

Resolution 368-V-07

WHEREAS, Mr. and Mrs. Stephen Block are requesting permission to increase the height of the fence along the south property line and make modifications to the guest house, including: new windows on the south façade; new exterior lighting on the north façade; a new air conditioning unit in the courtyard between the main house and guest house; and various interior changes including the addition of a room eligible for use as a bedroom construct located at 100 Indian Road, Piedmont, California, which construction requires variance; and

WHEREAS, a variance from the requirements of Chapter 17 of the Piedmont City Code is necessary in order to increase the number of

rooms eligible for use as a bedroom without supplying conforming parking; and

WHEREAS, after reviewing the application, plans and any and all testimony and documentation submitted in connection with such application, and after having visited subject property, the Piedmont Planning Commission makes the following findings:

1. The underlying lot and existing improvements present unusual physical circumstances, including but not limited to the fact that adequate off-street parking exists on the property to satisfy code parking requirements based upon its number of bedrooms. Because of these circumstances, strictly applying the terms of this chapter would keep the property from being used in the same manner as other properties in the zone which conform to the zoning requirements.
2. The variance is compatible with the immediately surrounding neighborhood and the public welfare because this large property has ample off-street parking. There are at least 8 parking spaces in the existing garages, albeit these spaces are not technically code conforming in dimension.
3. Accomplishing the improvement without a variance would cause unreasonable hardship in planning, design, or construction because the existing unique and richly detailed 3-part rolling garage doors would have to be replaced and other structural changes made in order to convert the garages to four conforming spaces. This would detrimentally affect the historic architecture of the property designed by Newsom & Newsom in the 1920's. Variance approval in this case is consistent with the legislative intent section of the Zoning Code pertaining to parking.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the variance application of Mr. and Mrs. Block for the above variance at 100 Indian Road, Piedmont, California, in accordance with the plans and specifications on file with the City.

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

Moved by Henn, Seconded by Levine

Ayes: Levine, Stehr, Thiel, Henn

Noes: None

Absent: Kellogg, Robertson

Resolution 368-DR-07

WHEREAS, Mr. and Mrs. Stephen Block are requesting permission to increase the height of the fence along the south property line and make modifications to the guest house, including: new windows on the south façade; new exterior lighting on the north façade; a new air conditioning unit in the courtyard between the main house and guest house; and various interior changes including the addition of a room eligible for use as a bedroom construct located at 100 Indian Road, Piedmont, California, which construction requires design review; and

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

1. The exterior design elements (including but 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) are aesthetically pleasing as a whole and harmonious with existing and proposed neighborhood development in that: the proposed new windows match the detailing on the existing house. The proposed landscaped fence is attractive and compatible with both the applicant's and neighboring properties.
2. The design is appropriate, considering its effect on neighboring properties' existing views, privacy and access to direct and indirect light because no changes are planned that affect neighboring property. The proposed 8 ft. fence height provides desired privacy screening for the pool area from the shared driveway.
3. The safety of residents, pedestrians, and vehicle occupants and the free flow of vehicular traffic are not adversely affected, considering the circulation pattern, parking layout and points of ingress and egress because there is no change in existing circulation patterns.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review application of Mr. and Mrs. Block for construction at 100 Indian Road, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

1. The approved plans are those submitted on November 27, 2007, after neighbors were notified of the project and the plans were available for public review;
2. Due to the scope and nature of the application, a construction management plan shall be developed and approved by staff prior to obtaining a building permit. Said plan shall be comprehensive while specifically addressing the duration of the project, construction hours, the staging of materials, and parking of worker vehicles to ensure the free flow of traffic along Indian Road;
3. Compliance with Chapter 9 Article III of the Municipal Code, which governs the recycling of construction and demolition debris, will be required on all permits issued on or after

February 1, 2007. Applicants of covered and non-covered projects are eligible to participate in the Incentive Program in which the City will provide one-half the cost of debris boxes provided by the City's franchised waste hauler and used exclusively for the purpose of removing recyclable construction and demolition debris;

4. Prior to the issuance of a building permit, the applicant shall choose one of the following three options:
 - A licensed land surveyor or civil engineer shall locate and "stake" the right (south) property line to verify that the proposed fence is located on the applicant's property;
 - The applicant shall submit a completed and signed fence location agreement with the adjacent property owners at 110 Indian Road, 128 Indian Road and any other property owners that have a right to the easement for the private road; or
 - Relocate the fence entirely on the applicant's side of the property.

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

Moved by Henn, Seconded by Levine

Ayes: Levine, Stehr, Thiel, Henn

Noes: None

Absent: Kellogg, Robertson

The Commission recessed for dinner at 6:30 p.m. and reconvened at 7:05 p.m.

**Variance and
Design Review
1658 Lower Grand**

Ms. Carole Porter is requesting variance and design review to demolish the existing 2-car non-conforming garage and build a new 2-car garage with a second story above it to accommodate a new bedroom and bath in the rear right corner of the lot. The requested variances are from: (1) Section 17.10.7 to allow the new garage and second story to extend to within 2'6" of the right side property line in lieu of the code required minimum of a 4 ft. side yard setback; and (2) Section 17.10.8 to allow the new garage and second story to extend to within 4 ft. 9/16 in. of the rear property line in lieu of the code required minimum of a 4 ft. rear yard setback;

Written notice was provided to neighbors. **Two affirmative, five negative response forms** were received.

Public testimony was received from:

Jeanne Chiang, Project Architect, stated that in response to discussions with her client this afternoon, Ms. Porter has agreed to eliminate the second story bedroom suite above the new garage. However, the applicant desires to have a new garage structure height of 12 ft. to match the height of the adjacent rear neighbor's garage. She added that the design of the garage roof may also change from that existing and/or proposed. No plans indicating these proposed revisions have been prepared or submitted.

Cheryl Wong, Kathy Long (Manor Ave. residents) and Nancy Olsen (Lower Grand) all voiced their appreciation for the elimination of the second story addition above the garage, noting that the combined height of the garage and addition was out of character with the neighborhood and would have adversely impacted their light, privacy and sky views. However, they requested to see the revised plans before committing their support to the revised design.

The Commission agreed that no action could be taken on the application until revised plans are submitted. The Commission requested that the applicant consider when preparing plans for the revised design to: (1) keep the height of the garage as low as possible; and (2) examine moving the new garage more toward the right, away from the corner of the house so that the left garage door is more accessible for vehicle ingress/egress. The Commission also requested that new story poles be erected or the existing modified to indicate the new height of the redesigned garage. Ms. Chiang requested a 90-day extension of the Permit Streamlining Act so that she would have sufficient time to prepare revised plans. She asked that the application be continued to the February meeting.

Resolution 30-PL-07

RESOLVED, that the Planning Commission continues until the February 2008 meeting further consideration of Ms. Carole Porter's variance and design review application for proposed construction at 1658 Lower Grand Avenue on the grounds that the applicant has proposed significant changes to the proposed project tonight and additional time is required to prepare revised plans and drawings, erect story poles and notice neighboring residents of the revised design.

Moved by Levine, Seconded by Stehr

Ayes: Levine, Stehr, Thiel, Henn

Noes: None

Absent: Kellogg, Robertson

Non-Residential Sign Design Review 345 Highland Avenue

Bank of America is requesting non-residential sign design review to replace the existing, non-illuminated signage on the building with a larger, non-illuminated sign facing Highland Avenue and a new non-illuminated sign on Vista Avenue. A similar application was denied, without prejudice, on September 10, 2007.

Written notice was provided to neighbors. **One affirmative and four negative response forms** were received. **Correspondence** was received from: Michelle Eldridge, Nov. 29.

Public testimony was received from:

Bill Lehman, Project Contractor, described the proposed changes in the signage made in response to the September meeting, stating that the signage letters are non-illuminated and of a size equal to the lettering size on the Citibank building. He added that Citibank has signs on both sides of its building and he requested that the same consideration be given to Bank of America.

The Commission supported the revised application, agreeing that the new signage is responsive to Commission requests, appropriately sized for the building and that two signs are appropriate in this particular case because of the building's corner location.

Resolution 427-DR-07

WHEREAS, Bank of America is requesting non-residential sign design review to replace the existing, non-illuminated signage on the building with a larger, non-illuminated sign facing Highland Avenue and a new non-illuminated sign on Vista Avenue located at 345 Highland Avenue, Piedmont, California, which signage requires design review; and

WHEREAS, after reviewing the application, plans and any and all testimony and documentation submitted in connection with such application, and after having visited subject property, the Piedmont Planning Commission finds that the proposal conforms with the criteria and standards of Section 17.19.2 of the Piedmont City Code:

1. There is sufficient basis for allowing two business signs on this building (south and east elevations) because the property is bordered by two streets and the proposed signage helps identify the business for the public from both directions.
2. Each sign, including a sign required by law, is simply and tastefully designed. Graphic depictions related to the non-residential use are appropriate;
3. Each, sign, including a sign required by law, is compatible in design, color and scale to the front of the building, adjoining structures and general surroundings;
4. The proposed signs are oriented toward pedestrian and vehicular traffic;
5. The signs are constructed of sturdy and quality materials

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the non-residential sign design review application of Bank of America for signage at 345 Highland Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City.

RESOLVED FURTHER, that the approval of the Planning Commission/City Council and any conditions of that approval shall not extend to any particulars set forth in the documents submitted for the project which are inconsistent with or in violation of any applicable law, including but not limited to Chapters 5 and 17 of the City Code, nor does the approval extend to matters not set forth, or inadequately

represented, in submitted documents (whether or not consistent with applicable law). The City reserves the right to require compliance with applicable laws and to attach conditions after initial approval is given, if noncompliance is discovered or additional conditions are considered necessary and appropriate in light of Commission/Council findings.

Moved by Levine, Seconded by Stehr

Ayes: Levine, Stehr, Thiel, Henn

Noes: None

Absent: Kellogg, Robertson

**Variance and
Design Review
1140 Oakland Avenue**

Mr. and Mrs. Hussein Saffouri are requesting variance and design review to construct new stairs and add new doors at the rear (south) side of the property. The requested variance is from Section 17.10.8 to allow a structure coverage of 45% in lieu of the code permitted maximum of 40%.

Written notice was provided to neighbors. **One affirmative response form** was received.

Public testimony was received from:

Hussein Saffouri stated that the proposed 6 ft. width of the new stairs and landing is desired so as to compliment the width of the existing double doors. Reducing the stair width to 3 ft. would result in an awkward arrangement.

The Commission supported application approval, noting that the project is removing an illegally constructed deck and replacing this structure with a new landing and stairs. The width of the stairs justifies variance approval in order to create a smooth transition between the stairs, landing and existing double doors.

Resolution 438-V-07

WHEREAS, Mr. and Mrs. Saffouri are requesting permission to construct new stairs and add new doors at the rear (south) side of the property located at 1140 Oakland Avenue, Piedmont, California, which construction requires variance; and

WHEREAS, a variance from the requirements of Chapter 17 of the Piedmont City Code is necessary in order to exceed the City's structure coverage limit; and

WHEREAS, after reviewing the application, plans and any and all testimony and documentation submitted in connection with such application, and after having visited subject property, the Piedmont Planning Commission makes the following findings:

1. The underlying lot and existing improvements present unusual physical circumstances, including but not limited to the small size of the lot and the location of existing improvements on the property. The property currently exceeds the City's structure coverage limit and the proposal reduces the amount of coverage by removing an illegally constructed deck. Because of these circumstances, strictly applying the terms of this chapter would keep the property from being used in the same manner as other properties in the zone which conform to the zoning requirements.

2. The variance is compatible with the immediately surrounding neighborhood and the public welfare because there is no impact on adjoining neighbors. The proposed improvements are at the rear of the property.

3. Accomplishing the improvement without a variance would cause unreasonable hardship in planning, design, or construction because without variance, it would not be possible to safely exit through the existing rear doors.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the variance application of Mr. and Mrs. Saffouri for the above variance at 1140 Oakland Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City.

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

Moved by Henn, Seconded by Stehr

Ayes: Levine, Stehr, Thiel, Henn

Noes: None

Absent: Kellogg, Robertson

Resolution 438-DR-07

WHEREAS, Mr. and Mrs. Saffouri are requesting permission to construct new stairs and add new doors at the rear (south) side of the property located at 1140 Oakland Avenue, Piedmont, California, which construction requires design review; and

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

1. The exterior design elements (including but 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) are aesthetically pleasing as a whole and harmonious with existing and proposed neighborhood development in that the design of the stairs is code compliant and aesthetically pleasing. The stairs are redwood with an attractive railing. The design is consistent with the other elements of the house and similar homes in the neighborhood.

2. The design is appropriate, considering its effect on neighboring properties' existing views, privacy and access to direct and indirect light because of the minor nature of the improvements and their location in the rear yard.
3. The safety of residents, pedestrians, and vehicle occupants and the free flow of vehicular traffic are not adversely affected, considering the circulation pattern, parking layout and points of ingress and egress because of the rear yard location of the improvements.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review application of Mr. and Mrs. Saffouri for construction at 1140 Oakland Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following condition:

- The proposed screen doors shall be painted to match the remaining doors throughout the residence.

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

Moved by Henn, Seconded by Levine

Ayes: Levine, Stehr, Thiel, Henn

Noes: None

Absent: Kellogg, Robertson

**Variance and
Design Review
111 Ricardo Avenue**

Mr. and Mrs. Ken Meyersieck are requesting variance and design review to modify the previously approved design (May 14 & September 7, 2007) for a new garage by increasing the height of the garage, increasing the size of the attic dormers, adding an exterior stair, making window and door modifications, and adding an exterior light fixture. The requested variance is from Section 17.10.7 to allow the eave and wall of the new garage to extend to within 6 inches of the right (north) side property line in lieu of the code required minimum of a 4 ft. side yard setback.

Written notice was provided to neighbors. **One affirmative and one negative response form** was received. **Correspondence** was received from: James Lord, Dec. 6; Anne Marie Miguel & Marion Beck, Dec. 7.

Public testimony was received from:

Ken Meyersieck described the proposed changes to his previously approved design, noting that the modifications will allow more convenient access and use of the attic space above the garage. The increased height in garage structure will also increase privacy by

blocking the current view of bedroom windows at 12 York. The attic space will be used for storage; the proposed dormers are included to add architectural relief to the structure.

Anne Marie Miguel stated that she is the new rear neighbor and the proposed increase in garage height will significantly impact the enjoyment, light, value and privacy of her rear yard. She objected to a 20 ft. high structure towering over her rear patio that is only 8 ft. away. She also voiced concern that the proposed changes would result in the creation of a second unit or teenage entertaining center. She urged that the application be denied and that only a garage, with no attic storage, be constructed.

James Lord also opposed the proposed project, citing a loss of morning kitchen light and the fact that the benefits of additional storage to the applicant are outweighed by the detrimental impact the increased structure height will have on adjacent York neighbors.

The Commission, with the exception of Commissioner Stehr, opposed application approval, citing: (1) the previously approved new garage is already a large structure and the requested changes are essentially creating a small house; (2) the proposed increase in garage height, size and mass will detrimentally impact the privacy, light and enjoyment of neighboring outdoor space; (3) the planting of evergreen screening by either the applicant or his neighbors will not mitigate the loss of light and sky view, even if it would lessen the visual impact of the new proposal; (4) it is unfair and inappropriate to grant a variance for an accessory storage addition when such construction/variance will significantly impact adjacent neighbors; (5) the proposed modifications could result in the garage attic space being easily converted into habitable space, which would result in the property exceeding the code limit for FAR; and (6) some storage area is included in the previously approved garage so there is no compelling hardship to justify allowing additional storage space, especially when such addition negatively impacts neighbors. Commissioner Stehr supported application approval, noting that: (1) the proposed modifications will allow more convenient access to the garage storage area; (2) the rear wall of the taller garage can be screened by vegetation; and (3) the resulting new garage will only be slightly taller than the neighboring garage and the design modifications provide a sensible and attractive design for improving storage area access.

Resolution 429-V-07

WHEREAS, Mr. and Mrs. Ken Meyersieck are requesting permission to modify the previously approved design for a new garage by increasing the height of the garage, increasing the size of the attic dormers, adding an exterior stair, making window and door modifications, and adding an exterior light fixture located at 111 Ricardo Avenue, Piedmont, California, which construction requires variance; and

WHEREAS, a variance from the requirements of Chapter 17 of the Piedmont City Code is necessary in order to construct additional structure within the right (north) side yard setback; and

WHEREAS, after reviewing the application, plans and any and all testimony and documentation submitted in connection with such application, and after having visited subject property, the Piedmont Planning Commission makes the following findings:

1. The underlying lot and existing improvements do not present unusual physical circumstances with regard to this particular application in that a variance has already been granted for a new 2-car garage in essentially the same location and this garage structure can be constructed without the requested additional/new variance.
2. The variance is not compatible with the immediately surrounding neighborhood and the public welfare because the proposed enlargement of the previously approved garage will have a negative impact on the privacy, light and utility of neighboring yards at the rear.
3. Accomplishing the improvement without a variance would not cause unreasonable hardship in planning, design, or construction because a variance was previously granted for the construction of a new 2-car garage with storage above in the exact same location.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission denies the variance application of Mr. and Mrs. Meyersieck for the above variance at 111 Ricardo Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City.

Moved by Levine, Seconded by Henn

Ayes: Levine, Thiel, Henn

Noes: Stehr

Absent: Kellogg, Robertson

Resolution 429-DR-07

WHEREAS, Mr. and Mrs. Ken Meyersieck are requesting permission to modify the previously approved design for a new garage by increasing the height of the garage, increasing the size of the attic dormers, adding an exterior stair, making window and door modifications, and adding an exterior light fixture located at 111 Ricardo Avenue, Piedmont, California, which construction requires design review; and

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

1. The exterior design elements (including but 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) are not aesthetically pleasing as a whole because they have a material negative impact on neighboring property to the rear in terms of light, privacy and use of their exterior space.
2. The design is not appropriate, considering its effect on neighboring properties' existing views, privacy and access to direct and indirect

light because in terms of structure height and building envelope expansion, it does not minimize the light and view impacts on adjacent properties. Because the proposal is for a secondary structure located within the setback, the impacts on adjacent properties take priority over the benefits to the applicant of enlarging an already approved garage.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission denies the design review application of Mr. and Mrs. Meyersieck for construction at 111 Ricardo Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City.

Moved by Levine, Seconded by Henn

Ayes: Levine, Thiel, Henn

Noes: Stehr

Absent: Kellogg, Robertson

**Design Review
99 Oakmont Avenue**

Mr. and Mrs. Robin Richardson are requesting design review to construct new features in the rear yard, including an in-ground swimming pool and water feature; a pool equipment enclosure; a new deck; and new hardscape improvements; and make modifications to the previously approved (August 14, 2006 & September 5, 2007) design for a rear addition to the house, including the elimination of a chimney, window and door modifications, and various changes to the interior.

Written notice was provided to neighbors. **One affirmative, one negative response form** was received. **Correspondence** was received from: Bart & Terry Paulding, Dec. 7

Public testimony was received from:

Steve Shirley, Project Architect, described the proposed improvements, stressing the multiple safety features designed into the pool/hot tub components and the fact that the proposed waterfall/water feature will be virtually silent.

Judith Richardson reiterated the safety/liability precautions taken to protect neighbors from any pool related damages in case of a major earthquake and responded to Commission questions concerning the dispute with her neighbors regarding the large redwood tree which was removed.

Terry Paulding disagreed with the applicant's summary regarding the redwood tree issue, stating that as a result of tree removal, she has suffered a significant loss of privacy. She opposed the massive resculpturing of the applicant's rear yard and her strong opposition for safety and privacy reasons of the proposed pool/hot tub being located less than 5 ft. from her property.

Bart Paulding objected to the applicants' piece-meal approach toward improving their property, noting that the scale and scope of proposed improvements have significantly escalated from what was originally proposed. He requested that the pool and water feature elements of the plan be denied and that the upper bedroom windows be reduced in size. (It was noted that these upper floor windows were previously approved).

The Commission agreed that the total scope of the project was not originally disclosed with the initial application, noting that had it been, in all likelihood the Commission would have required that conforming parking be provided, especially in light of the neighborhood's parking congestion problems. The Commission voiced concern that the proposed application represents a significant increase in the density of property use yet no conforming parking is being proposed. The Commission noted that at the time of original application approval, the applicant indicated that providing conforming parking would be too expensive, yet the proposed improvements to the rear yard are quite extensive and costly. The Commission also agreed that the elevated location of the proposed pool is unusual and problematic to neighbors, especially since privacy screening of this area was lost with the removal of the large redwood. The Commission also discussed at length whether the proposed pool and pool retaining wall should be considered "structure" for lot coverage calculation purposes. In the end, the Commission voiced support for the proposed modifications to the previously approved rear addition but opposed those elements related to the pool.

Resolution 434-DR-07

WHEREAS, Mr. and Mrs. Robin Richardson are requesting permission to construct new features in the rear yard, including an in-ground swimming pool and water feature; a pool equipment enclosure; a new deck; and new hardscape improvements; and make modifications to the previously approved (August 14, 2006 & September 5, 2007) design for a rear addition to the house, including the elimination of a chimney, window and door modifications, and various changes to the interior located at 99 Oakmont Avenue, Piedmont, California, which construction requires design review; and

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

With regard to the new features in the rear yard, including an in-ground swimming pool and water feature, a pool equipment enclosure, a new deck and new hardscape improvements:

1. The exterior design elements are not aesthetically pleasing as a whole and harmonious with existing and proposed neighborhood development in that they fail to comply with the City's Design Review Guidelines or Chapter 17. These proposed improvements are sufficient in size and magnitude, when considered with the previously approved application, to require that conforming on-site parking be provided. Conforming on-site parking was not required in connection with the previous application because of the lesser magnitude of the proposed improvements to the property.
2. The design of the pool related improvements is not appropriate because of its adverse effect on neighboring properties' existing views

and privacy and concern over safety in connection with a partially above-ground pool at an elevated site.

3. The safety of residents, pedestrians, and vehicle occupants and the free flow of vehicular traffic are adversely affected because of the magnitude of the previously approved and proposed improvements given the lack of conforming parking on the property.

With regard to proposed modifications to the previously approved design for a rear addition to the house, including the elimination of a chimney, window and door modifications and various changes to the interior:

1. The exterior design elements (including but 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) are aesthetically pleasing as a whole and harmonious with existing and proposed neighborhood development in that the proposed modifications are modest in nature and consistent with the original design.

2. The design is appropriate, considering its effect on neighboring properties' existing views, privacy and access to direct and indirect light because there is no impact.

3. The safety of residents, pedestrians, and vehicle occupants and the free flow of vehicular traffic are not adversely affected, considering the circulation pattern, parking layout and points of ingress and egress because there is no impact.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves Mr. and Mrs. Richardson's design review application for elements related to modifications to the previously approved rear addition and denies those elements related to the new features in the rear yard at 99 Oakmont Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City.

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

Moved by Levine, Seconded by Henn

Ayes: Levine, Thiel, Henn

Noes: Stehr

Absent: Kellogg, Robertson

**Variance and
Design Review
12 Alta Avenue**

Mr. and Mrs. Andrew Rowe are requesting variance and design review to construct an approximately 94 sq. ft. front addition and trellis, construct a new front entrance porch, make window modifications, and install new stairs and a handrail. The requested variances are from: (1) Section 17.10.6 to allow the new trellis to extend to within 6'3" of the front property line in lieu of the code required minimum of a 20 ft. front yard setback; and (2) Section 17.22(b) to allow a floor area ratio of 52.71% in lieu of the code permitted maximum of 50% for a parcel which exceeds 5,000 sq. ft. but is less than 10,000 sq. ft.

Chairman Thiel recused himself from discussion and action on this application and left the chambers.

Written notice was provided to neighbors. **Four affirmative response forms** were received.

Public testimony was received from:

Steve Shirley, Project Architect, stated that the front setback variance is unavoidable because the existing home is situated within the front setback. Also, the existing home exceeds the permitted FAR but the proposed project will reduce the amount of this excess. He noted that the existing storage room that is currently being used as a den will be converted back to non-habitation storage. The proposed design changes to the front porch and railings are intended to enhance the home's aesthetics.

The Commission supported the application, noting that the variances are a pre-existing situation and the small scale of the improvements will have no adverse impact on adjacent properties.

Resolution 435-V-07

WHEREAS, Mr. and Mrs. Andrew Rowe are requesting permission to construct an approximately 94 sq. ft. front addition and trellis, construct a new front entrance porch, make window modifications, and install new stairs and a handrail located at 12 Alta Avenue, Piedmont, California, which construction requires variance; and

WHEREAS, a variance from the requirements of Chapter 17 of the Piedmont City Code is necessary in order to construct within the front yard setback and to exceed the City's floor area ratio; and

WHEREAS, after reviewing the application, plans and any and all testimony and documentation submitted in connection with such application, and after having visited subject property, the Piedmont Planning Commission makes the following findings:

1. The underlying lot and existing improvements present unusual physical circumstances, including but not limited to the fact that this is a steep upslope lot and the existing house is located within the front setback. There is very limited space to construct conforming additions/improvements. Because of these circumstances, strictly applying the terms of this chapter would keep the property from being used in the same manner as other properties in the zone which conform to the zoning requirements.

2. The variances are compatible with the immediately surrounding neighborhood and the public welfare because the project will create a larger, more usable front porch.

3. Accomplishing the improvement without variance would cause unreasonable hardship in planning, design, or construction because the variance situation is pre-existing and no improvements to the front of the house can be made without variance.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the variance application of Mr. and Mrs. Rowe for the above variances at 12 Alta Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City.

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

Moved by Henn, Seconded by Levine

Ayes: Levine, Stehr, Henn

Noes: None

Recused: Thiel

Absent: Kellogg, Robertson

Resolution 435-DR-07

WHEREAS, Mr. and Mrs. Andrew Rowe are requesting permission to construct an approximately 94 sq. ft. front addition and trellis, construct a new front entrance porch, make window modifications, and install new stairs and a handrail located at 12 Alta Avenue, Piedmont, California, which construction requires design review; and

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

1. The exterior design elements (including but 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) are aesthetically pleasing as a whole and harmonious with existing and proposed neighborhood development: the proposal complies with Design Review Guidelines II-3(a) and (b) in that it is compatible in terms of scale, mass and architectural style with the existing residence.

2. The design is appropriate, considering its effect on neighboring properties' existing views, privacy and access to direct and indirect light because there is no material impact. The proposal complies with Design Review Guidelines II-1, II-2 and II-3. Window and door treatments are in keeping with the existing residence.
3. The safety of residents, pedestrians, and vehicle occupants and the free flow of vehicular traffic are not adversely affected, considering the circulation pattern, parking layout and points of ingress and egress. The proposed improvements will improve pedestrian ingress to the house.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review application of Mr. and Mrs. Rowe for construction at 12 Alta Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

1. The approved plans are those submitted on November 30, 2007, with additional information submitted on December 6, 2007, after neighbors were notified of the project and the plans were available for public review;
2. The proposed wood trellis shall have a maximum height of 8 ft., plus or minus 6 inches.
3. Due to the scope and nature of the application, a construction management plan shall be developed and approved by staff prior to obtaining a building permit. Said plan shall be comprehensive while specifically addressing the duration of the project, construction hours, the staging of materials, and parking of worker vehicles to ensure the free flow of traffic along Alta Avenue;
4. Compliance with Chapter 9 Article III of the Municipal Code, which governs the recycling of construction and demolition debris, will be required on all permits issued on or after February 1, 2007. Applicants of covered and non-covered projects are eligible to participate in the Incentive Program in which the City will provide one-half the cost of debris boxes provided by the City's franchised waste hauler and used exclusively for the purpose of removing recyclable construction and demolition debris;
5. For safety reasons, the existing lower level "den" shall be reverted back to its original unfinished condition, and a notice of non-habitation shall be filed with the county because it does not meet building code requirements for habitation.

RESOLVED FURTHER, that the approval of the Planning Commission/City Council and any conditions of that approval shall not extend to any particulars set forth in the documents submitted for the project which are inconsistent with or in violation of any applicable law, including but not limited to Chapters 5 and 17 of the City Code, nor does the approval extend to matters not set forth, or inadequately represented, in submitted documents (whether or not consistent with applicable law). The City reserves the right to require compliance with

applicable laws and to attach conditions after initial approval is given, if noncompliance is discovered or additional conditions are considered necessary and appropriate in light of Commission/Council findings.

Moved by Henn, Seconded by Levine

Ayes: Levine, Stehr, Henn

Noes: None

Recused: Thiel

Absent: Kellogg, Robertson

**Variance and
Design Review
374 Wildwood Avenue**

Mr. Bill Reed and Ms. Laura Mazel are requesting variance and design review to construct an approximately 151 sq. ft. addition on the west façade of the residence, modify exterior stairs, make window and door modifications throughout, and install new exterior light fixtures. The requested variances are from: (1) Section 17.10.6 to allow the new window addition to extend to within 3'7" of the front property line in lieu of the code required minimum of a 20 ft. front yard setback; (2) Section 17.10.7 to allow the new addition to extend to extend to within 3'7" of the right side property line in lieu of the code required minimum of a 4 ft. side yard setback; and (3) Section 17.16 to allow the addition of a room eligible for use as a bedroom for a total of a 4 bedroom residence with a 2-car garage length of 18'6" in lieu of the code required minimum dimension of 20 ft.

Written notice was provided to neighbors. **Eight affirmative response forms** were received. **Correspondence** was received from: Laura Mazel & Bill Reed, Dec. 1.

Public testimony was received from:

Steve Shirley, Project Architect, stated that the existing garage can accommodate the parking of two vehicles – it is 18 inches short of the length required by code. In addition, there is ample on-street parking in the neighborhood. As to the setback variances, Mr. Shirley noted the irregular shape of the lot and the fact that only the building eave will encroach into the setback. This eave could be eliminated but it would compromise the integrity of the home's design and architecture.

Stephen Clayton voiced support for application approval, noting that the project will improve the aesthetics and livability of the home for the applicant and will not impact his property's privacy. He agreed with the architect that there is ample on-street parking in the area.

George Kersh requested that a construction management plan be required specifically addressing the location of construction vehicle parking, sidewalk repairs and locations of porta-potties and debris boxes. He requested that debris boxes and porta-potties not be located in front of his property.

The Commission supported application approval, noting the attractiveness of the design, the fact that the house is not readily visible from the street so the proposed improvements will have no visual impact, the front and side yard setback encroachment is pre-existing and the parking variance is justified given that it would be an undue hardship to require the garage to be lengthened 18 inches given the sloped driveway and the fact that an encroachment permit into the City

right-of-way would be required; the existing garage currently accommodates the parking of two vehicles.

Resolution 436-V-07

WHEREAS, Mr. Bill Reed and Ms. Laura Mazel are requesting permission to construct an approximately 151 sq. ft. addition on the west façade of the residence, modify exterior stairs, make window and door modifications throughout, and install new exterior light fixtures located at 374 Wildwood Avenue, Piedmont, California, which construction requires variance; and

WHEREAS, a variance from the requirements of Chapter 17 of the Piedmont City Code is necessary in order to construct within the front and right yard setbacks and to increase the number of rooms eligible for use as a bedroom without supplying conforming parking; and

WHEREAS, after reviewing the application, plans and any and all testimony and documentation submitted in connection with such application, and after having visited subject property, the Piedmont Planning Commission makes the following findings:

1. The underlying lot and existing improvements present unusual physical circumstances, including but not limited to the pre-existing encroachment of the home into the front and side yard setbacks, the fact that the existing garage accommodates the parking of two vehicles and extending garage length to comply with code dimensions would require encroachment into the City's right-of-way. Because of these circumstances, strictly applying the terms of this chapter would keep the property from being used in the same manner as other properties in the zone which conform to the zoning requirements.
2. The variances are compatible with the immediately surrounding neighborhood and the public welfare because extending the length of the garage to conform with code would not materially effect the existing parking situation/capacity on the property. There is ample on-street parking in the neighborhood.
3. Accomplishing the improvement without variance would cause unreasonable hardship in planning, design, or construction because the existing house encroaches into the setbacks and the proposed improvements cannot be accomplished without variance.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the variance application of Mr. Reed and Ms. Mazel for the above variances at 374 Wildwood Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City.

RESOLVED FURTHER, that the approval of the Planning Commission/City Council and any conditions of that approval shall not extend to any particulars set forth in the documents submitted for the project which are inconsistent with or in violation of any applicable law, including but not limited to Chapters 5 and 17 of the City Code, nor does the approval extend to matters not set forth, or inadequately represented, in submitted documents (whether or not consistent with applicable law). The City reserves the right to require compliance with

applicable laws and to attach conditions after initial approval is given, if noncompliance is discovered or additional conditions are considered necessary and appropriate in light of Commission/Council findings.

Moved by Stehr, Seconded by Henn

Ayes: Levine, Stehr, Thiel, Henn

Noes: None

Absent: Kellogg, Robertson

Resolution 436-DR-07

WHEREAS, Mr. Bill Reed and Ms. Laura Mazel are requesting permission to construct an approximately 151 sq. ft. addition on the west façade of the residence, modify exterior stairs, make window and door modifications throughout, and install new exterior light fixtures located at 374 Wildwood Avenue, Piedmont, California, which construction requires design review; and

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

1. The 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. The distance between the proposed upper level addition/expansion and adjacent residences is reasonable and appropriate due to the existing topography and neighborhood development pattern. Upper level setbacks greater than the setbacks required for the lower level have been considered and are not necessary to reduce losses of ambient and reflected light: They are reasonable and appropriate given the existing topography. The exterior design replicates the original style and most of the changes to the residence are invisible from the street, with the exception of the neighbor to the west. This neighbor supports the project and indicates that the improvements will improve his view of the applicant's home. The proposed improvements comply with Design Review Guidelines II-1, II-2 and II-3(a) and (b) in terms of scale, mass and architectural compatibility and integration into the existing residence.

2. The proposed upper level addition/expansion has been designed in a way that reasonably minimizes view and light impacts on neighboring properties (as defined in Section 17.2.70), including consideration of the location of the new construction, lowering the height of the addition, expansions within the existing building envelope (with or without excavation), lower level excavation for new multi-level structures, and/or changing the roof slope or ridge direction: The proposed improvements are virtually invisible except by the west neighbor. The design respects established setbacks and is appropriately sited on the property. The proposal complies with Design Review Guidelines II-6, II-6(a) and (b).

3. The size and height of the addition is commensurate with the size of the lot (excluding the portions of the lot that cannot reasonably be

built on), and is in keeping with the existing neighborhood development pattern. The proposed improvements comply with Design Review Guidelines II-1, II-2, II-3© and (d), II-6(b) and (c) as stated above.

4. The safety of residents, pedestrians, and vehicle occupants and the free flow of vehicular traffic are not adversely affected, considering the circulation pattern, parking layout and points of ingress and egress. In accordance with Sections 17.16.1 and 17.22.1, the existing or proposed on-site parking is appropriate to the size of the new upper level or new multi-level structure or addition, and additional parking is not required to prevent unreasonable short and/or long term parking impacts on the neighborhood. There is no change in existing circulation patterns.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review application of Mr. Reed and Ms. Mazel for construction at 374 Wildwood Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following condition:

1. The approved plans are those submitted on November 30, 2007, with additional information submitted on December 6, 2007, after neighbors were notified of the project and the plans were available for public review;
2. Due to the scope and nature of the application, a construction management plan shall be developed and approved by staff prior to obtaining a building permit. Said plan shall be comprehensive while specifically addressing the duration of the project, construction hours, the staging of materials, and parking of worker vehicles to ensure the free flow of traffic along Wildwood Avenue;

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

Moved by Stehr, Seconded by Henn

Ayes: Levine, Stehr, Thiel, Henn

Noes: None

Absent: Kellogg, Robertson

ANNOUNCEMENT

General Plan Update – The City Planner announced that the Commission will hold a special meeting on January 28, 2008, at 6:30 p.m. to discuss the General Plan Update process.

ADJOURNMENT

There being no further business, Chairman Thiel adjourned the meeting at 10:00 p.m.

EXHIBIT F

139 Lexford Conditions of Approval California Construction Cost Index (CCCI) Updates									
	2023	2022	2021	2020	2019	2018	2017	2016	2015 Amount ¹
California Construction Cost Increase % ²	9.40%	9.30%	13.40%	2.80%	3.60%	1.30%	3.50%	4.40%	N/A
Site Safety Security Update (2015 Condition #5 as amended in 2016 Lawsuit Settlement)	\$316,143	\$288,979	\$264,391	\$233,149	\$226,798	\$218,917	\$216,108	\$208,800	\$200,000
Facilitates Security Update (2015 Condition #6)	\$553,250	\$505,713	\$462,684	\$408,010	\$396,897	\$383,105	\$378,189	\$365,400	\$350,000
Neighboring Property Damage Security Update (2015 Condition #7)	\$4,742,146	\$4,334,686	\$3,965,861	\$3,497,232	\$3,401,976	\$3,283,761	\$3,241,620	\$3,132,000	\$3,000,000
1. 2015 Amounts from City of Piedmont Conditions of Approval, October 19, 2015, and City of Piedmont Lawsuit Settlement, March 28, 2016									
2. Annual California construction cost increases for 2016 through 2023, as shown at: https://www.dgs.ca.gov/RESD/Resources/Page-Content/Real-Estate-Services-Division-Resources-List-Folder/DGS-California-Construction-Cost-Index-CCCI									

**Public Comments received January 9 through noon March 28, 2024,
regarding design review permit application DRPC2023-018, 139 Lexford
Road**

January 18, 2024

Dear Piedmont City Council,

I hope this message finds you well. I am writing to formally submit my signed copy of the "Appeal of January 8, 2024, Planning Commission Decision Regarding 139 Lexford Road." Unfortunately, I was unable to personally deliver this document in person due to my current travel commitments.

I understand that my neighbors have already submitted a group appeal document in person, and I appreciate their efforts in ensuring that our concerns are heard by you. To maintain transparency and ensure that my appeal is included in the official records, I am emailing my signed copy to you, along with the confirmation of receipt for your reference.

Please find attached the signed appeal document, as well as the confirmation of receipt, which verifies the submission's date and time. I kindly request that you include my appeal in the ongoing proceedings.

Thank you for your attention to this matter, and I look forward to a fair and thorough consideration of our appeal.

Sincerely,
Feng Pan
140 Somerset Rd

January 18, 2024

Dear Piedmont City Council,

I am writing to formally submit my signed copy of the "Appeal of January 8, 2024, Planning Commission Decision Regarding 139 Lexford Road." Unfortunately, I was unable to personally deliver this document in person.

I understand that my neighbors have already submitted a group appeal document in person, and I appreciate their efforts in ensuring that our concerns are heard by you. To maintain transparency and ensure that my appeal is included in the official records, I am emailing my signed copy to you, along with the confirmation of receipt for your reference.

Please find attached the signed appeal document, as well as the confirmation of receipt, which verifies the submission's date and time. I kindly request that you include my appeal in the ongoing proceedings.

Thank you for your attention to this matter, and I look forward to a fair and thorough consideration of our appeal.

Sincerely,

Mohammad R. Bazargani,
150 Somerset Road, Piedmont Ca

February 28, 2024

Dear council members:

Today, we stand united, not just as neighbors but as a collective force, ready to address the challenge before us—a litigation on 139 Lexford Road that's difficult to build upon. Yes, the upcoming construction will disrupt our lives. For six months, we'll endure traffic, trucks, and the relentless noise of jackhammers. But let's be clear: this temporary inconvenience pales in comparison to the potential legal battles our city council would face by ignoring the facts we've painstakingly gathered about this land.

Over recent months, we've united like never before, conducting inspections and consulting with experts to understand the true nature of this terrain. Our findings are not opinions but hard facts, evidencing the significant challenges and risks associated with building on this site.

Our unity and collective intelligence as neighbors are our strengths. We've come together, not just to oppose for the sake of opposition, but to ensure any development is safe, practical, and considerate of our community's integrity. This is about doing the right thing—for today and for our future.

Let this be a message to the city council: We are a unified, informed group. Ignoring our findings not only risks unnecessary legal turmoil but also disregards the voice of a community committed to the well-being of our neighborhood. Our unity and resolve are strong. We stand ready to engage constructively, but we are also prepared to protect our interests.

Thank you for your attention, your support, and your unwavering commitment to our community. Together, we are not just neighbors; we are a formidable force advocating for the right course of action for the city of Piedmont.

Thank you.
Sebastien Sahuc

February 21, 2024

Dear Honorable City Council of Piedmont Members, Mayor Cavanaugh, Vice Mayor Betsy Smegal Anderson, Council Member Conna McCarthy, Council Member Jennifer Long, and Council Member Tom Ramsey:

We are writing to you in support of our Neighborhood Appeal to The City Council dated January 18, 2024 regarding the January 8, 2024 Planning Commission Decision Regarding 139 Lexford Road. Our concerns are very serious regarding that if a house is constructed at 139 Lexford Road that it is built responsibly and safely for all of Piedmont and our neighborhood.

Please see the attached copy of our letter to the Piedmont Planning Commission dated December 24, 2023 along with a copy of our Planning Application Comment Form of December 21, 2023 requesting that if a house is constructed at 139 Lexford Road that 11 protections be required of both The City and the developers to protect both Piedmont and the neighboring homes. When you read our letter, please note that most of these protections were set as a precedent in the past and historically required in the previously approved building permits. However, these protections for both The City and the neighboring homes were removed in the current approved January 8, 2024 Planning Commission Decision.

More recently, Moran Engineering who performed surveys a few years ago for us at our home at 125 Lexford Road contacted me to gain access to our backyard to get to the "hub" they placed there to work off of for a survey of 139 Lexford and neighboring properties. When I, Michael, met with the surveyor, he strongly advised me to be sure that we get both a Performance Bond and a Completion Bond for any development at 139 Lexford Road. He cautioned me about the number of unfinished foundations and homes just sitting there for years in the Montclair and Rockridge Hills. Already in Piedmont that I know of, we have two unfinished homes that have been sitting for years as well on streets that I regularly travel, Magnolia and Ronada.

In closing, we are asking The Piedmont City Council to require that if a home is constructed at 139 Lexford Road that the entire project be built responsibly and safely with at least the same protections or more as set as a precedent and historically required in the previously approved building permits. We are also requesting that the previously required protections be updated with 2024 financial numbers.

Respectfully,

Holly and Michael Gardner

Holly and Michael Gardner
125 Lexford Road
Piedmont, California 94611

Attachments:

- A. PDF of Gardner Letter of Response – December 24, 2023
- B. PDF of Planning Application Comment Form - December 21, 2023

March 27, 2024

Dear City Council:

Attached please find the suggested conditions of approval for your consideration, revising the Planning Commission's approval. All of this information is in the file and the appeal, but has not been pulled together this way. I circulated to 30+ neighbors, received their input and revised.

Thank you.

Christopher Van Gundy

Planning Commission Minutes
September 14, 2015

1. The exterior design elements are aesthetically pleasing as a whole and harmonious with existing and proposed neighborhood development. The distance between the addition and adjacent residences is reasonable and appropriate due to the existing topography and neighborhood development pattern. Upper level setbacks greater than the setbacks required for the lower level have been considered and are not necessary to reduce losses of ambient and reflected light, because the decks and lower level roofs and staircases are appropriate.
2. The proposed addition has been designed in a way that reasonably minimizes view and light impacts on neighboring properties, because the structure has been designed to be nestled into the hillside to minimize view and light impacts on neighboring properties.
3. The size and height of the addition is commensurate with the size of the lot (excluding the portions of the lot that cannot reasonably be built on), and is in keeping with the existing neighborhood development pattern, because it has been designed to have a street-accessible driveway and has a unique architectural style that is in keeping with the neighborhood. The proposed house is similar in size to other houses in the neighborhood and is substantially below the maximum allowable floor area ratio.
4. The safety of residents, pedestrians, and vehicle occupants and the free flow of vehicular traffic are not adversely affected, considering the circulation pattern, parking layout and points of ingress and egress. The existing or proposed on-site parking is appropriate to the size of the new addition, and additional parking is not required to prevent unreasonable short and/or long term parking impacts on the neighborhood, because the proposed house has a code-compliant garage that is easily accessible and usable.
5. The project complies with Design Review Guidelines I-1(a), I-2(a), I-2(b), I-2(c), I-2(d), I-5, I-5(a), I-5(b), I-6, I-7, I-9, I-9(a), 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), IV-1, IV-1(a), IV-1(b), IV-2, IV-2(a), IV-3, IV-3(a), IV-5, IV-6, V-1, V-2, V-4, V-5, V-6, V-9.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review application for a new house at 139 Lexford Road, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

1. **Foundation/Shoring/Excavation Plan [1].** The Property Owner shall submit grading, 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. The plans shall include the signatures of the Property Owner's geotechnical engineer and the City's geotechnical consultant, certifying that they have reviewed the proposed plans and they find them in conformance with the recommendations of the various geotechnical reports for this project. Within 10 days of Property Owner's submission of the plans, the property owners of the properties listed in Condition of Approval No. 2 (the "Neighboring Property Owners") shall have the opportunity to provide their comments on any grading, foundation, excavation, and shoring plans to the City's geotechnical consultant before the geotechnical engineer certifications are provided.

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Planning Commission Minutes
September 14, 2015

124 Lexford Road
125 Lexford Road
132 Lexford Road

168 Lexford Road
150 Somerset Road

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

2. Neighboring Property Inspection [2]. 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 135 Lexford Road, 140 Lexford Road, 145 Lexford Road, 77 Huntleigh Road, 87 Huntleigh Road, 130 Somerset Road, 140 Somerset Road, 160 Somerset Road, & 170 Somerset 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.

3. Geotechnical Report and Review [3]. 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 Alan Kropp as 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. Mr. Kropp's services shall be provided for the sole benefit of the City and

whose reports and recommendations can be relied upon only by the City. Mr. Kropp 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 Mr. Kropp deems necessary. The Property Owner shall provide payment for this at the time of the Building Permit submittal. Mr. Kropp shall provide the Neighboring Property Owners with limited necessary status reports as the Foundation/Shoring/Excavation Plan progresses. Except for these status reports, the Property Owner will not pay for consultation between Mr. Kropp and the Neighboring Property Owners, and Mr. Kropp shall provide the Property Owner and City with all reports and correspondence among Mr. Kropp and the Neighboring Property Owners.

Before visiting the Project site, Mr. Kropp must provide ~~Lakritz~~ *The Property Owner* reasonable notice and evidence of professional liability insurance covering Mr. Kropp and naming ~~Lakritz~~ *The Property Owner* as an additional insured. ~~Lakritz~~ will not be liable for any acts or omissions of Mr. Kropp or any of his representatives.

If Mr. Kropp is or becomes unable to serve as the independent geotechnical consultant for the Project, Van Gundy may nominate an alternative independent geotechnical consultant for the Project, subject to ~~Lakritz's~~ and City's approval. ~~Lakritz~~ and City will not unreasonably withhold or delay their approval of Van Gundy's nominee.

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125 Lexford Road
168 Lexford Road
145 Lexford Road
135 Lexford Road

4. **Construction Management Plan [4].** 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 and other potential construction impacts, as well as other details involving the and the days and hours permitted for heavy excavation. Outside construction involving high levels of noise, including excavation, hammering, and tile sawing, shall be limited to Monday through Saturday, from 8:30 a.m. to 4:30 p.m. Construction personnel shall be instructed not to park in front of 132 Lexford Road. The plan shall specify the sequencing of grading, excavation, shoring, foundation and construction activities. The City Building Official may require modifications and amendments to the Construction Management Plan throughout the course of the Project and until the Final Inspection.

Regional Stormwater Management Permit in order to prevent construction site discharges of pollutants and other regulated materials during construction. Prior to the issuance of a building permit, the Applicant shall submit a construction stormwater management plan prepared by a licensed Civil Engineer to achieve timely an defective 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 must 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.

b. Continual Street Access for Emergency Vehicles. The Construction Management Plan shall specifically address methods of providing continual street access for emergency vehicles at all times, which shall be subject to review and approval by the Fire Chief.

c. Haul routes shall be provided to the City for review and approval. To the extent possible, haul routes shall attempt to minimize or eliminate use of minor residential roadways. Street and pavement conditions shall be observed and documented by the City on all haul routes prior to commencement of construction.

5. **Site Safety Security [5].** 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 \$200,000 to stabilize the foundation of the Project to ensure the Project site is not left in a dangerous or unfinished state, and if any funds are remaining, to landscape for aesthetic purposes. City shall release such security to Lakritz at the time it issues the first certificate of occupancy for the Project, which may be a temporary, partial or final certificate of occupancy.

Damage or observable and unusual wear and tear to haul routes on Hampton Road and Lexford Road as specified by the City shall be repaired at the Property Owner's expense after Final Inspection.

316,143

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- 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.

6. **City Facilities Security [6].** 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 ~~\$350,000~~ ^{1553,250} 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.

(5)

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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.

7. **Neighboring Property Damage Security [7].** The Applicant shall provide adequate and appropriate Insurance or bonds, as approved by the Director of Public Works and City Attorney against damage to neighboring properties at 135 Lexford Road, ~~140 Lexford Road~~, 145 Lexford Road, 77 Huntleigh Road, 87 Huntleigh Road, 130 Somerset Road, 140 Somerset Road, 160 Somerset Road, & 170 Somerset Road, by any construction, excavation, and related work in any way involving the project, such insurance or bonds to be in the amount of ~~\$3,000,000.00~~ and with any conditions established by the Director of Public Works after consultation with the Applicant. If the Director of Public Works determines that obtaining any particular insurance would be extremely difficult for Applicant due to its lack of availability even at an increased cost, the Director of Public Works may authorize an alternative method of providing equal protection to neighboring properties, including but not limited to partial coverage by Umbrella Insurance if that appears appropriate. Such insurance or any alternative method shall allow for claims to be made for up to one year after the issuance of the Certificate of Occupancy on Applicant's project. Any and all such insurance or any alternative method shall specifically indicate that it covers damages to the above properties, and if such insurance is meant to also cover other potential damages, such as personal injuries or damages to other than the above named properties, any such further coverage shall be in addition to the \$3,000,000 earmarked for neighboring properties.

8. **Contractor's General Liability Insurance [7].** 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

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See City Updated

Condition at page 13

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occurrence. The insurance shall include an endorsement requiring notice to the City if the insurance is cancelled or changed, and Property Owner shall immediately arrange for substitute insurance coverage. 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.

9. **Subsidence [9].** 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.

10. **Construction Completion Schedule [11].** 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 complete of each phase.

a. The Construction Completion Schedule with associated construction values for each benchmark shall set forth completion dates for the following benchmarks:

- i. Completion of Excavation and Shoring;
- 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
- xi. 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 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 Property Owner's 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. If the work for any specific benchmark has not been completed within 90 days after the completion date set forth in the

*See City Updated
Condition
Pages 18-19*

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(5)

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Approved Schedule, and the delay in completion has not been caused by force majeure, the Director of Public Works has the option at any time thereafter to 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 has the option to refer the application to the Planning Commission for public review.

11. Sound and Vibration Mitigation Plan and Review [12]. 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.

12. Modifications to Conditions [13]. 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.

13. Dedication of Funds [14]. All funds or financial vehicles set forth in any of the above conditions shall be earmarked or dedicated so that they are not subject to creditors claims.

14. City Attorney Cost Recovery [15]. 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

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within 90 days after the Project has an approved Final Inspection by the Chief Building Official.

15. Consultant Cost Recovery [16]. 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 \$10,000 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.

16. Errors and Omissions Insurance [17]. 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, and the City of Piedmont shall be named as an additional insured on such insurance coverage.

17. Approved Plan Set. The approved plans are those submitted on April 9, 2015, with additional information submitted June 10th, June 16th, and July 2nd, 2015, after notices to neighbors were mailed and the application was available for public review.

18. 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.

19. C&D Compliance. Compliance with Chapter 9 Article III of the Municipal Code, which governs the recycling of construction and demolition debris, is required for all phases of this project.

20. 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 southeastern property line adjacent to 145 Lexford Road and the northern property line adjacent to 130 and 140 Somersset Road 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).

*See Updated
City Condition at
Pages 13-14*

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21. 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

22. 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.

23. California's Water Efficient Landscape Ordinance: Unless exempt, the property Owner shall comply with the requirements of California's Model Water Efficient Landscape Ordinance in effect at the time of building permit submittal, 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).

24. City Easement. City records indicate that a City sewer main and associated easement abut the east property line of this project and are located near the proposed construction. The applicant shall work with City staff to verify the location and depth of the sewer main. In addition, the City shall videotape the existing sanitary sewer main to assess its pre-construction condition in order to make a determination as to whether any repairs to or replacement of the sewer main is required prior to the commencement of excavation and/or construction. (The City is responsible for the cost of the main line, and the property owner for costs of the lateral.) As part of the final inspection the same sanitary sewer lines shall be inspected as required by the Director of Public Works, who shall also determine if the sewer line was damaged as a result of the construction and therefore must be repaired at the applicant's expense. The applicant is responsible to locate their private sewer lateral and note such location on the building permit drawings.

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

26. **Sidewalk.** The applicant shall be responsible for installation of sidewalk fronting the entire project. Sidewalk construction shall be per City standards.

27. **Driveway.** The applicant shall be responsible for installation of a driveway for the property. The portion of the driveway within City right-of-way shall be constructed per City Standards.

28. **Right-of-Way.** Any work within the City's right-of-way will require obtaining an encroachment permit prior to commencement of work.

29. **Elevator Tower.** The elevator tower shall be provided with additional faux windows, recesses, decorative vents, or other elaborations that break up the massing of the tower and provide visual interest. Said modifications shall be subject to staff review and approval.

Moved by Chase, Seconded by Behrens

Ayes: Behrens, Chase, Ode

Noes: None

Recused: None

Absent: Theophilos, Zhang

The Commission recessed for dinner at 6:35 p.m. and reconvened at 7:10 p.m.

Design Review
256 Wildwood Avenue

The Property Owner is requesting permission to make various modifications at the rear of the property, including to remodel an existing upper level addition; remodel an existing upper level deck; construct a new lower level addition; and make modifications to windows and doors throughout the house.

Written notice was provided to neighbors. Two affirmative response forms were received.

Public testimony was received from:

Dan Hano, Project Architect, described the project and explained that the new addition and deck will be more consistent with the design of the original house. In response to questions from the Commission, Mr. Hano explained that the existing driveway is extremely narrow and unsafe, that it cannot be expanded due to the location of the property line and existing house, and that it is proposed to remain as is. Mr. Hano also answered questions about the proposed spiral staircase and the proposed French doors.

The Commission was unanimously in support of the application, stating that the proposed addition and deck was an improvement over the existing addition and deck.

Resolution 276-DR-15

WHEREAS, the Property Owner is requesting permission to make various modifications at the rear of the property, including to remodel an existing upper level addition; remodel an existing upper level deck; construct a new lower level addition; and make modifications to windows and doors throughout the house,

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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).

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the variances and design review permit applications for the construction at 139 Lexford Road, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

1. **Window and Door Material.** As specified in the plans, the building material for the new windows and doors shall be aluminum.
2. **Window Color Scheme.** All the windows on the house shall have a consistent color scheme.
3. **Window Recess.** All new windows shall be recessed 3 inches from the exterior wall to the face of window sash in order to maintain consistency with the proposed Mediterranean style architecture, as required by the City's Design Guidelines and Standards and Window Replacement Policy. Window details shall be submitted

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for review and approval at the time of building permit application.

4. **Exterior Lighting.** All new exterior light fixtures surface-mounted to walls and ceilings shall be downward directed with an opaque or translucent shade that completely covers the light bulb.
5. **Sound.** The proposed air conditioning unit shall meet the sound requirements of a maximum 50 decibels (dBA) at the nearest property line as proscribed in Building Code Section 8.02.020 EE. Any modifications in order to meet the sound requirements including a sound barrier or an enclosure are subject to staff review and approval.
6. **Garage Door.** To facilitate vehicular access, the garage door shall be motorized. If design modifications are required to accomplish this, those modifications shall be subject to staff review. In addition and in compliance with California Health and Safety Code Section 19892, an automatic garage door opener for the garage door(s) shall have a battery backup function that is design to operate when activated in the event of an electrical outage.
7. **Contractor's General Liability Insurance.** To ensure that the contractor doing work in the City will be responsible for damages caused by the work to City property or to neighboring property, the Property Owner shall require all contractors performing work on the Project to maintain General Liability Insurance for protection from claims for damages because of bodily injury, including death, and claims for damages, other than to the contractor's work itself, to property which may arise out of or result from the contractor's operations. Such insurance shall be written for not less than \$2,000,000 per occurrence. The insurance shall include an endorsement requiring 10 days prior notice to the City if the insurance is to be cancelled or changed, and Property Owner shall immediately arrange for substitute insurance coverage. If the contractor's insurance carrier states in writing that it is unable to provide the required endorsement, Property Owner shall be responsible for providing the City with the required notice if the insurance is to be cancelled or changed. Property Owner's failure to provide such notice shall constitute grounds for revocation of the City's design review approval and/or permit. If the Property Owner does not have a general contractor, the Property Owner shall maintain property insurance and coverage for contractors, which is substantially equivalent to the contractor's requirement of this section.
8. **Modifications to Conditions.** The City may impose modifications to Conditions of Approval #7, #22, and #25 in the event such modification is necessary in the opinion of the Director of Planning & Building in consultation with the City Attorney, *so long as the modified documents are to*
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. **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.
11. **Defense of Legal Challenges.** The Property Owner shall indemnify, defend and hold harmless the City, its Council, Planning Commission, advisory boards, officers, employees, consultants and agents (hereinafter "City") from any claim, action or proceeding (hereinafter "Proceeding") brought against the City to attack, set aside, void or annul the City's actions regarding any development or land use permit, application, license, denial, approval or authorization, including, but not limited to, variances, use permits, developments plans, specific plans, general plan amendments, zoning amendments, approvals and certifications pursuant to the

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

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12. **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 North, East, and South property lines as shown on the approved plans. The intent is to verify that the approved features are constructed at the approved dimension from the property lines.
13. **Building Height and Floor Level Verification.** Prior to foundation and frame inspections, the applicant shall provide the Building Official written verification by a licensed land surveyor stating that the floor levels and roof of the new structure are constructed at the approved heights above grade.
14. **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.
15. **Sewer Main Condition and Repair.** City records indicate that City storm and sewer mains and associated easement(s) may be located near the proposed construction next to the east property line. Prior to the issuance of a building permit, the Property Owner shall submit a revised copy of the survey prepared by Moran Engineering to show sewer manhole covers and any easements. Said easements and manhole covers shall also be shown on the building permit drawings. The applicant shall also work with City staff to verify the location and depth of the storm and sanitary sewer mains. In addition, the City shall videotape the existing sanitary and storm sewer mains to assess their pre-construction condition in order to make a determination as to whether any repairs to or replacement of the sewer main is required prior to the commencement of excavation and/or construction. (The City is responsible for the cost of the main line, and the property owner for costs of the lateral.) As part of the final inspection the same sanitary and storm sewer lines shall be inspected as required by the Director of Public Works, who shall also determine if the sewer lines were damaged as a result of the construction and therefore must be repaired at the applicant's expense. The applicant is responsible to locate their private sewer lateral and note such location on the building permit drawings.
16. **Stormwater Design.** The California Regional Water Quality Control Board requires all projects, or a combination of related projects, that create and/or replace 2,500 square feet or more of impervious surface to comply with Provision C.3.i of the Municipal Regional Stormwater NPDES Permit. As required by the Chief Building Official, the Property Owner shall verify the total area of impervious surface to be created and/or replaced within the scope of this project, or this project combined with other related projects and/or permits, and incorporate the site design measure(s) required under Provision C.3.i into the plans submitted for a building permit. Copies of the Municipal Regional Stormwater Permit are available from the Piedmont Public Works Department

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and on-line at cleanwaterprogram.org.

17. **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. 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.
18. **Arborist's Report and Certified Tree Preservation Plan.** Before the issuance of a building permit, the Property Owner shall submit an Arborist's Report and Certified Tree Preservation Plan that includes tree preservation measures to preserve the existing Oak trees in the upper left portion of the property and the Eucalyptus trees along the east property line. 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.
19. **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.
20. **Geotechnical Report and Review.** 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

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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.

21. **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.
22. **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

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- 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.
23. **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 \$10,000 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.
24. **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.
25. **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 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:
- safety, which means the cost to make the site and structure safe if construction should cease mid-way through the Project;
 - 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
 - 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

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- 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.
26. **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.
27. **Construction Management Plan.** The Property Owner shall develop a comprehensive Construction Management Plan. The Construction Management Plan shall identify the point(s) for access to the property for construction and 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.
- b. 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.
- c. Neighboring Property Owner Permission. Should the execution of the Foundation/Shoring/Excavation Plan require excavation into a neighboring property or if access onto the neighboring property is necessary for construction, the applicant shall submit, prior to the issuance of Building Permit, a written statement from the neighboring property owner granting permission for access onto his/her property for the purpose of excavation and/or construction.
28. **Construction Completion Schedule.** Work on the Project, once begun, shall be promptly executed with continuous good faith and reasonable progress. Since timely completion of this Project is of the essence, the Applicant shall submit for approval a Construction Completion Schedule, which will specify, in detail, the duration and percentage of the project as a whole for each phase.
- a. The Construction Completion Schedule with associated construction values

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- 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 Planning and Building.
- b. Before the Project begins, the Director of Planning and Building shall make a determination as to the reasonableness of the proposed completion dates applicable to the Project, and that determination shall constitute the Approved Construction Completion Schedule and be binding on the Applicant. The City may, at the Applicant's sole cost, engage the services of a consultant to review the proposed Construction Completion Schedule and, to the extent the period allocated for any work appears unjustifiable, recommend to the Director of Planning and Building a reasonable completion date for any benchmark.
 - c. In the event of a change in scope of the Project that would alter the benchmarks dates set forth in the Approved Construction Completion Schedule, or in the event the Applicant fails to meet a benchmark set forth in the Approved Construction Completion Schedule, the Applicant shall immediately submit a request to amend the Approved Construction Completion Schedule to the Director of Planning and Building. 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 Planning and Building shall evaluate the proposed amendments to the Approved Construction Completion Schedule in accordance with subsection (b) of this condition of approval.
 - d. The failure of the Applicant to comply with the Approved Construction Completion Schedule, or any amendments to it approved in conformance with subsection (d) of this condition of approval, shall constitute a nuisance under the City of Piedmont City Code ("City Code"). The failure of the Applicant to comply with the Approved Construction Completion Schedule may result in the City pursuing administrative citations pursuant to Chapter 1 of the City Code, nuisance abatement pursuant to Chapter 6 of the City Code, or any other remedy available to the City under the law. Additionally, if the Applicant fails to comply with the Approved Construction Completion Schedule, the Director of Planning and Building, 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 Planning and Building, at his or her sole discretion, may refer the application to the Planning Commission for public review and direction.
29. **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 December 1, 2015, by submitting the following required information to the Building Department:
- a. Landscape Documentation Package that includes the following 6 items: i) Project Information; ii) Water Efficient Landscape Worksheet; iii) Soil Management Report; iv) Landscape Design Plan; v) Irrigation Design Plan; and vi) Grading Design Plan. The Landscape Documentation Package is subject to staff review and approval before the issuance of a building permit.
 - b. Once a building permit has been issued, the Property Owner shall submit a copy of the Water Efficient Landscape Worksheet, to the local water purveyor, East Bay Municipal Utility District.
 - c. After completion of work, the Property Owner shall submit to the City and East Bay Municipal Utility District a Certificate of Completion, including an

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irrigation schedule, an irrigation maintenance schedule, and an irrigation audit report. The City may approve or deny the Certificate of Completion.

Moved by Zucker, Seconded by Rowland
Ayes: Jajodia, Rowland, Strout, Zucker
Noes: Batra
Absent: None
Recused: None

**Variance and Fence
Wall Design Review,
1 Croydon Circle,
VAR2023-010 and
DRFW2023-005**

The Property Owners are requesting permission to construct new retaining walls and fencing within the 20-foot street yard setback along St. James Drive and make various hardscape and landscape improvements. A variance is required in order to construct a patio within the 20-foot street yard setback.

Public testimony was received from:

Balaram Puliglanda, Property Owner, stated the project is to update the retaining walls and provide an additional seating area in the small yard.

The Commissioners discussed whether or not there are unusual topographic circumstances, lot size and setback constraints, and no privacy impacts that would allow them to make findings for approval of the variance. Although Commissioner Jajodia stated she could not make findings to approve the setback variance, all Commissioners stated their support the construction of the retaining walls.

Resolution 010-VAR-23, 005-DRFW-23

WHEREAS, the Property Owners are requesting permission to construct new retaining walls and fencing within the 20-foot street yard setback along St. James Drive and make various hardscape and landscape improvements, which construction requires a design review permit, and

WHEREAS, a variance from the requirements of Chapter 17 of the Piedmont City Code is required in order to construct within the 20-foot 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 visiting the subject property, the Piedmont Planning Commission finds that the project is categorically exempt under the California Environmental Quality Act, CEQA, pursuant to CEQA Guidelines Section 15303, Class 3 (e), New Construction or Conversion of Small Structures; and

WHEREAS, the variances from the 5-foot right side yard setback requirement is approved because the project complies with the variance criteria under Section 17.70.040 as follows:

1. The property and existing improvements present unusual physical circumstances of the property, including the lot is smaller and is located on a corner. The lot is built up with structures and has limited private outdoor space. Strictly applying the terms of this chapter would keep the property from being used in the same manner as other conforming properties in the zone.
2. The property is compatible with the immediately surrounding neighborhood and the public welfare because other nearby properties have patio spaces within the 20-foot street yard setback. The majority of homes in the neighborhood have private outdoor living spaces.

#60

March 28, 2024

Dear City Council,

In addition to the attachment to my email yesterday, please include in the file that email and this email.

I would also like to note that the originally attached set of proposed conditions was taken from the original conditions approved for years and which contained several conditions recently rejected by the Planning Commission. So I added back in the original conditions, updated the financial security numbers in accordance with Stuart Block's calculations (also previously submitted and part of the appeal), and added in some properties in various sections. Some conditions the Planning Commission carried over from before, so I used the "City Updated" conditions. I also got the neighbors' approval for all of this.

So these conditions I submitted yesterday are essentially the conditions that were in place for years, updated with newer Planning Commission condition language where applicable, new financial security numbers to reflect increased costs after 8 years, and some additional properties for inspections and parking restrictions. The City has the power to approve these protections pursuant to the city code as explained in our appeal. Specifically, the rejection by the Planning Commission of important protections in place for years in the face of even more grievous developments (the recent collapse of at least two hillsides of similar structure and soil at 519 Hampton and 180 Somerset as per Alan Kropp's most recent report, also submitted) ignored the city code mandate to protect neighbors.

It will cost millions of dollars to remove hundreds of dump trucks of material from the steep, unstable hillside from 139 Lexford, at great risk to the properties currently supported by that massive quantity of soil, 130 and 140 Somerset, and neighboring properties and foundations given the months of hoe ramming required to do so (and where test borings need to go 30 feet into the hillside and failed at 7). There is only fairness to all including the developer, and upside to the City and neighbors in re-instating the requested protections. The current property owner bought the property knowing these protections were previously in place for years. If that LLC is serious about developing the property as it claims, then they can afford these protections.

If the City confirms the rejection of these established protections and the project collapses, is abandoned, or surrounding properties collapse or are damaged, and/or God forbid one of us is hurt in a collapse as happened at 139 Lexford some years ago, the city will be on the hook for millions of dollars. The LLC's indemnification will be meaningless since it will have no money.

The Planning Commission explained its rejection of these established protections with one word - buildability. It made it harder to build because the financial security figures were deemed to be too high. There was no thought to the issues I raised above in removing the protections, or to the fact that anyone who builds this property will need millions of dollars anyway to hoe ram out all of this material from a steep hillside and build a proper foundation.

And the established conditions will further buildability. There will be no CEQA lawsuit that we were forced to bring before and which will effectively stop development for several years. There will be an active management of key development milestones by a neutral and well-respected soils engineer, Alan Kropp, to ensure that the property is developed in a workable and sensible way. Development started previously, and Alan's help identified mistakes in the planning.

Thank you for your consideration. I will see you all Monday night.

Regards,
Chris