

## **PIEDMONT PLANNING COMMISSION**

### **Regular Meeting Minutes for Monday, August 10, 2009**

A Regular Session of the Piedmont Planning Commission was held August 10, 2009, in the City Hall Council Chambers at 120 Vista Avenue. In accordance with Government Code Section 54954.2(a) the agenda for this meeting was posted for public inspection on July 31, 2009.

#### **CALL TO ORDER**

Chairman Kellogg called the meeting to order at 5:40 p.m.

#### **ROLL CALL**

Present: Commissioners Jim Kellogg, Melanie Robertston, Bobbe Stehr, Clark Thiel and Alternate Commissioner Michael Henn

Absent: Commissioner Jonathan Levine (excused)

Staff: City Planner Kate Black, City Attorney George Peyton, Planning Technicians Sylvia Toruno and Manira Sandhir and Recording Secretary Chris Harbert

City Council Liaison: Councilmember John Chiang

#### **CONSENT CALENDAR**

There was no consent calendar.

#### **PUBLIC FORUM**

There were no speakers for the public forum.

#### **APPROVAL OF MINUTES**

Rick Schiller requested that page 23 of the July 13 meeting minutes be amended to: (1) substitute the number "277" for the phrase "over 200" and (2) Rabbi David Cooper's comments include the following statement: "that the Synagogue currently uses the sanctuary at maximum capacity two or three times a year." He also requested that speakers addressing the Commission be required to name the city in which they reside; the City Planner responded that state law prohibits the Commission from requiring that such information be provided.

#### **Resolution 17-PL-09**

RESOLVED, that the Planning Commission approves as submitted its meeting minutes of July 13, 2009.

Moved by Thiel, Seconded by Stehr

Ayes: Kellogg, Robertson, Stehr, Thiel

Noes: None

Absent: Levine

#### **REGULAR CALENDAR**

The Commission considered the following items of regular business:

##### **Conditional Use Permit 1300 Grand Avenue**

Kehilla Community Synagogue is requesting modifications to the operations, programs, employees and hours of operation at the Synagogue and to operate a new preschool with 15 students. The application proposes to make an interior modification to enlarge the room for the preschool, but no exterior modifications to the property or building are proposed.

The proposed changes in use include:

*Days & Hours of Operation:*

Monday: 8:00 a.m. – 9:30 p.m.  
Tuesday: 7:30 a.m. – 9:30 p.m.  
Wednesday: 8:00 a.m. – 9:30 p.m.  
Thursday: 8:00 a.m. – 9:30 p.m.  
Friday: 8:00 a.m. – 10:30 p.m.  
Saturday: 8:00 a.m. – 10:30 p.m.  
Sunday: 9:00 a.m. – 9:30 p.m.  
Preschool Hours: Monday-Friday: 8 a.m. – 3 p.m.

*Types of Staff/Personnel:*

Clergy: 1.9 FTE  
Administrative: 3.4 FTE, including 0.4 FTE for new Preschool Administrative Assistant  
Program Directors: 2.5 FTE, including 1.0 FTE for new Preschool Director;  
Teaching Staff: up to 30 individuals, working between 2 and 7 hours per week; seasonally, including teenage teaching assistants. Some teachers work off-site. There will be two additional new positions for a Preschool teacher and a Preschool aide;  
Custodial: 0.7 FTE

*Maximum Number of People On Site: 285*

*Number of On-Site Parking Spaces: 18*

Consideration of this agenda item was continued from the July 13, 2009, meeting.

Written notice was provided to neighbors. **One affirmative, ten negative response forms** were received. **Correspondence** was received from: Sandy Bredt, June 11, July 28 & August 4; Piedmont Director of Public Works, February 4, 2008; Sandra Cook; Rick Schiller; Neil Teixeira; Jim Nemechek; Ellen Dektar; Don Condon; Kenneth & Meredith Rasco; Binh Nguyen; Judy Kriege; Group Letter from Don Condon & Vivian Barron/Kenneth & Meredith Rasco/Ferdinand Brislawn/Rosie Newhall & David Riker/Catherine & Margaret Nguyen/Manny Myers & Bevan Vinton/Ron & Lindsey Leung/Chuck Chakravartula & Penny Mori/Neil & Angela Texeira/Rick Schiller/Dion & Amy Lim/Ken & Dianne Mockel/Jamieson Mockel & Chelsa Haliwell

**Public testimony** was received from:

Kehilla Community Synagogue Board of Directors and/or Trustees Barbara Rhine, JoAnn Lovejoy, Ronald Cohen and Seth Frohman highlighted the following reasons in support of application approval: (1) the requested uses are in accordance with the existing size of the facility and represent a reasonable use of the property; (2) the events and services offered by Kehilla serve Piedmont residents in a variety of ways, including Adult School programs and as an election polling place; (3) federal law restricts the types of regulations local governments can impose on religious institutions; (4) currently 8 Piedmont families are members of Kehilla and it is anticipated that the number of Piedmont residents who will become members will increase; (5) the proposed pre-school will benefit the community and is

consistent with Kehilla's strong focus on youth education. Also, Mr. Cohen read a letter from a Fairview resident (78 Fairview) supporting application approval.

Rabbi David Cooper stated that the seating capacity of the sanctuary is 277; however, sometimes special services/observances may exceed this number. He estimated that approximately one-third of Saturday services at Kehilla are attended by more than 150 people. He summarized the array of services and observances held at Kehilla and the typical number of attendees, noting that High Holiday services are held off-site because attendance can range between 1,000 to 1,300. He also emphasized that while evening services are infrequent, they are a necessary part of Jewish religious observance.

Sandy Bredt, Executive Director of Kehilla Synagogue, explained the reasons for the expanded hours, noted that the City's 2008 Traffic Study (Wiltec Report) indicates parking availability during these hours and briefly described the parking arrangements for the proposed pre-school. She added that sometimes doors and windows are left open during musical events on warm evenings because the facility is not air conditioned. She also explained how use of the facility has evolved since Kehilla assumed ownership of the property.

Andy Gold, Kehilla member and Piedmont resident, provided information concerning the types of activities occurring at other Piedmont religious institutions in support of his contention that Kehilla's requests are comparable and consistent with those of other Piedmont churches and within the normal use of a pre-existing religious facility.

Judy Kriege of *Bananas*, Alameda County's Child-Care Resource Referral Service, noted the high demand for child-care services, especially in the Grand/Lake area and emphasized that most of the child-care services in Piedmont currently do not meet the needs of working families because they are part-day programs or parent cooperatives. Kehilla's proposed pre-school will help meet the needs of working families.

Tim Silk and Monica Haddad, Administrator and Director, respectively, of the proposed pre-school, provided information for comparison purposes regarding other pre-school operations in Piedmont, explained the proposed parking and drop-off plan, described the intent and objectives of the pre-school, noted how the pre-school will compliment Kehilla's programs and stated that there will be no food deliveries made to the school – children will bring their own lunches. In response to Commission questions, it was noted that the pre-school will be exempt from Piedmont business taxes.

Rick Schiller, Bevan Vinton, Don Condon, Neil Teixeira, David Riker and Catherine Nguyen, all Fairview residents, (1) criticized the City for failing to require Kehilla to abide by its current CUP, noting numerous violations; (2) reiterated their fear that if the proposed expansion in use is approved, Kehilla will continue to push the limits of this approval and continue to violate the terms of its permit; (3) emphasized that noise from early morning and late evening parking lot activity is very disturbing given the close proximity of adjacent homes; (4) felt that the

request to increase capacity and extend hours of use is primarily intended to accommodate the non-religious activities/events occurring at Kehilla; and (5) opposed the proposed pre-school, stressing that the school will not benefit Piedmont residents, is a low-priority need in Piedmont and will detrimentally impact the neighborhood in terms of noise pollution and traffic/parking congestion. They urged that the current application be denied and Kehilla be required to comply with the conditions of its current CUP.

The Commission engaged in a lengthy discussion of the issue. Commissioner Thiel reiterated his July comments in voicing his support of application approval as submitted. In particular, he noted that lack of documented evidence by neighborhood residents that Kehilla activities have a detrimental impact, his belief that the application satisfies the findings necessary to approve the CUP, the absence of any evidence that the proposed pre-school and expanded hours will substantially increase existing noise, issues related to parking/drop off activities associated with the pre-school have been addressed and the fact that the property was constructed as a house of worship and the proposed uses and hours are consistent with other religious institutions in Piedmont and appropriate for the size of the facility. The remaining Commissioners agreed that the adult school and pre-school uses of the facility and the extended morning hours are appropriate, consistent with uses occurring at other Piedmont religious institutions, benefit Piedmont residents and pose minimal impact on the neighborhood. The Commission further agreed that the Piedmont Fire Code dictates the maximum occupancy capacity of the facility and the proposed request for a maximum occupancy of 285 appears to comply with the code. However, the Commission majority did believe that late evening activities at the facility do have an adverse noise impact on the adjacent residential neighborhood. In discussions with Rabbi Cooper re this issue, Rabbi Cooper agreed that limiting evening activities Monday through Thursday and Sunday evenings to 9 p.m. and to 10 p.m. on Friday and Saturday evenings would be acceptable, provided that the Synagogue could exceed these time restrictions from time to time as necessary to conform with religious observances required under Jewish Law. He stated that no concerts or other non-religious musical events/fundraisers would be scheduled or held on Sunday evenings. The Commission also noted that excessive noise is addressed by City Code Section 12.8 *Noise Declared Nuisance*. The Commission further agreed that the term of the requested modified CUP should be same as the current CUP – expires November 15, 2014.

#### **Resolution 143-CUP-09**

WHEREAS, Kehilla Community Synagogue is requesting modifications to its Conditional Use Permit related to operations, programs, employees and hours of operation at the Synagogue and to operate a new preschool with 15 students at 1300 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 makes the following findings:

1. The use is of benefit to Piedmont residents. It is societally accepted that religious and cultural institutions are beneficial. The pre-school and adult school are community services.
2. The use will be properly related to other land uses and transportation and service facilities in the vicinity. The site is near main thoroughfares and all necessary utilities are available. Parking, pick-up and drop off for the pre-school is provided.
3. Under all the circumstances and conditions of the particular case, the use will not have a material adverse effect on the health or safety of persons residing or working in the vicinity. As conditioned with regard to hours of operation, number of attendees and students at the school, impacts on the neighborhood will be reduced to a less than substantial level.
4. The use will not be contrary to the standards established for the zone in which it is to be located. Religious and educational facilities are listed as conditional uses in Zone A. Similar restrictions have been applied to other religious facilities.
5. The use will not contribute to a substantial increase in the amount of noise or traffic in the surrounding area. As conditioned, the hours of operation and access to public streets will cause a limited, but not substantial, increase in noise and traffic to adjacent areas. The Piedmont Noise Ordinance further regulates noise as an additional protection to the surrounding neighborhood.
6. The use is compatible with the General Plan and will not adversely affect the character of the surrounding neighborhoods or tend to adversely affect the property values of homes in the surrounding neighborhoods. The City's General Plan envisioned a community served by religious and educational facilities such as that proposed.
7. Adequate provision for driveways to and from the property has been made; facilities for ingress and egress from secondary streets instead of arterials, where possible, have been made; provision for parking in compliance with this Chapter 17 has been made, together with sufficient agreements to enforce the carrying out of such plans as may be required by the Council. Access is provided from a main thoroughfare (Grand Avenue) and traffic and parking studies have shown that there will not be a substantial and undue impact from the limited expansion in use and hours.
8. The plans conform to all other laws and regulations of the City, provided, however, that the Council shall have the right to require front, rear and side yard setbacks greater than those otherwise provided in the laws and regulations of the City if the Council finds that such larger front, rear and side yard areas are necessary to provide for the health, safety and general welfare of the residents of Piedmont in accordance with its zoning laws. The proposed expansion of use does not affect building setbacks.

RESOLVED, that in consideration of the findings and facts set forth above, the Piedmont Planning Commission recommends approval by

the City Council of the application for a conditional use permit by Kehilla Community Synagogue for property located at 1300 Grand Avenue, Piedmont, subject to the following conditions:

1. The approved application includes information submitted on August 4, 2009, after neighbors were notified of the project and the plans were available for public review;
2. The term of the CUP shall extend to November 15, 2014;
3. Days & Hours of Operation shall be as follows:

Monday:	8:00 a.m. – 9:00 p.m.
Tuesday:	7:30 a.m. – 9:00 p.m.
Wednesday:	8:00 a.m. – 9:00 p.m.
Thursday:	8:00 a.m. – 9:00 p.m.
Friday:	8:00 a.m. – 10:00 p.m.
Saturday:	8:00 a.m. – 10:00 p.m.
Sunday:	9:00 a.m. – 9:00 p.m.

With the understanding that exceptions to the times can be made as mandated by the seasonal Jewish holiday schedule

Preschool Hours: Monday-Friday: 8 a.m. – 3 p.m.;

4. Maximum Occupancy: 285, not to exceed the maximum allowed by the Piedmont Fire Code

Moved by Henn, Seconded by Stehr

Ayes: Kellogg, Robertson, Stehr, Henn

Noes: Thiel

Absent: Levine

*(Note: Commissioner Thiel's "no" vote was because of the reduction in requested hours)*

The Commission recessed for dinner at 8:30 p.m. and reconvened at 9:00 p.m.

**Second Unit with  
Parking Exception  
1530 Grand Avenue**

Mr. Nian-Sheng Qi is requesting a Second Unit Permit with a Parking Exception to convert the existing basement level into an approximately 558 sq. ft. studio rent-restricted second unit. A parking exception is requested in order to develop a second unit without providing the required on-site parking.

Written notice was provided to neighbors. **Two affirmative, one negative response forms** were received. **Correspondence** was received from: Sonny Lau; Mark D'Ambrosi

**Public testimony** was received from:

Nian-Sheng Qi stated that several years ago he created basement living space for his mother-in-law. Now, he wishes to convert this living space into an independent second unit. He stressed that on-street parking is not a problem in his neighborhood.

Mark D'Ambrosi voiced concern over the ever increasing density of his neighborhood. He agreed with Mr. Qi that as a rule, there is no significant parking congestion in the neighborhood.

The Commission supported application approval, agreeing that the creation of a very low income housing unit helps the City comply with ABAG housing requirements, the second unit is conveniently located near public transportation and there is little parking congestion in the neighborhood. Alternate Commissioner Henn suggested that as a condition of approval, the main home's existing garage be required to be used for parking. The remaining Commissioners voiced concern over requiring residents to actually use their garages for vehicle parking. The Commission acknowledged that the property has a 2-car conforming garage and hence complies with code requirements. Legislating that this garage be actually used for parking would be difficult to enforce and would set a precedent that would affect numerous homeowners throughout Piedmont. However, the Commission agreed that the garage should be inspected to insure that it is capable of being used for parking and has not been converted to habitable living space.

**Resolution 144-SU-09**

WHEREAS, Mr. Nian-Sheng Qi is requesting permission a Second Unit Permit with a Parking Exception to convert the existing basement level into an approximately 558 sq. ft. studio rent-restricted second unit located at 1530 Grand Avenue, Piedmont, California, which conversion requires a parking exception in order to develop a second unit without providing the required on-site 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 finds that the proposal conforms with the criteria and standards of Section 17D.6(b)2 of the Piedmont City Code:

1. The parking exception will not be detrimental to the health, safety or general welfare of persons residing in the neighborhood and will not negatively impact traffic safety or emergency vehicle access to residences or create hazards by obstructing view to or from adjoining sidewalks and streets. The property is located on a corner with ample on-street parking available.
2. The parking exception will not adversely affect the character of the surrounding neighborhood because the second unit is located adjacent to a busy street and there will be negligible additional impact caused by an additional car;
3. There is sufficient street parking available to accommodate the parking exception and the second unit is located within 1/3 mile of a public transit stop.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the Second Unit Permit with a Parking Exception application of Mr. Qi for construction at 1530 Grand Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

1. Prior to the issuance of a building permit the completed, signed and notarized "Declaration of Restrictions – Property with Approved Second Dwelling Unit" form shall be recorded;

2. Prior to the issuance of a building permit or second unit permit, the completed, signed and notarized "Rent-Restricted Second Unit Affordable Rent Certification" form shall be recorded;
3. The second unit shall remain a very low income rent-restricted unit per the California Department of Housing and Community Development, 2009 State Income Limits, adjusted annually;
4. The annual City of Piedmont rental tax is waived for the first year. Thereafter, the property owners shall annually comply with all required rental taxes and fees;
5. In consideration of the exceptions granted and in order to maintain the affordable housing stock, an owner is prevented from terminating a rent-restricted second unit permit for 10 years after the date of the Planning Commission approval, unless the Planning Commission, at its discretion, approves the termination of the rent-restricted second unit permit;
6. Prior to the issuance of a building permit, City staff shall inspect the property's garage to verify that it has not been converted to habitable space.

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 Robertson, Seconded by Henn

Ayes: Kellogg, Robertson, Stehr, Thiel, Henn

Noes: None

Absent: Levine

**Variance, Design  
Review & Fence  
Design Review  
505 Scenic Avenue**

Mr. and Mrs. Vittorio Salvo are requesting variance, design review and fence design review to substantially alter and expand the existing residence. The resulting 5,138 sq. ft., 3-story house will have 4 bedrooms, 3 baths, 3 half-baths, a large living and dining room, kitchen, studio, office, den, media room, 3 storage rooms, laundry room, and 2-car garage. Two mid-level rear decks and an upper level rear deck are proposed along with new landscaping. The requested variance is from Section 17. 10.6 to allow the eaves of the proposed garage to extend to within 1'0" of the front property line in lieu of the code required minimum of a 20 ft. front yard setback.

Written notice was provided to neighbors. **One conditional affirmative and one negative response form** was received.



**Public testimony** was received from:

Vittorio Salvo described the unique site conditions of his property, the intent to maintain the architectural integrity of the home's "two faces" and structurally and seismically upgrade the 1950's vintage residence.

The Commission agreed as to the attractiveness of the proposed improvements and the absence of any visual impact on the streetscape. During discussion, it was noted that (1) neighbor drainage concerns would be addressed as part of the building permit process; (2) despite the fact that the home is essentially being doubled in size, the residence will remain a 4 bedroom house -- while numerous rooms are being created, these additional living areas cannot be easily converted into potential bedrooms; and (3) a performance bond is not necessary even though this is a major construction project because the proposed construction is not readily visible from the streetscape or adjacent properties -- there is no eyesore potential. The Commission also acknowledged that no modifications are proposed to the existing front fence and gate and that fencing is not a part of this current application.

**Resolution 150-V-09**

WHEREAS, Mr. and Mrs. Vittorio Salvo are requesting permission to substantially alter and expand the existing residence. The resulting 5,138 sq. ft., 3-story house will have 4 bedrooms, 3 baths, 3 half-baths, a large living and dining room, kitchen, studio, office, den, media room, 3 storage rooms, laundry room, and 2-car garage. Two mid-level rear decks and an upper level rear deck are proposed along with new landscaping located at 505 Scenic 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

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 very steep slope of the lot and the fact that there is no other place for a garage other than at the street level within the front setback. 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 it will improve the neighborhood's off-street parking situation, lots of homes in the area have garages located within the front setback and only the garage is located within the setback -- the house remains outside of the setback.
3. Accomplishing the improvement without a variance would cause unreasonable hardship in planning, design, or construction because it would be undesirable to place the garage on top of the house and there

does not appear to be sufficient room to locate a garage to either the left or right side of the residence.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the variance application of Mr. and Mrs. Salvo for the above variance at 505 Scenic 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 Robertson

Ayes: Kellogg, Robertson, Stehr, Thiel, Henn

Noes: None

Absent: Levine

#### **Resolution 150-DR-09**

WHEREAS, Mr. and Mrs. Vittorio Salvo are requesting permission to substantially alter and expand the existing residence. The resulting 5,138 sq. ft., 3-story house will have 4 bedrooms, 3 baths, 3 half-baths, a large living and dining room, kitchen, studio, office, den, media room, 3 storage rooms, laundry room, and 2-car garage. Two mid-level rear decks and an upper level rear deck are proposed along with new landscaping located at 505 Scenic 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. There is a mix of architectural styles in the neighborhood, the proposal maintains the mid-century style of the existing residence and the use of exterior materials and colors compliment the existing architecture and setting of the lot. The proposed improvements are nearly invisible because the residence is situated within the trees on the downslope side and screened from street view by the garage and existing fence. The project complies with

Design Review Guidelines II-1, II-2, II-3, II-3(a) through (d), II-4, II-5, II-5(a), II-6, II-6(a) through (c), II-7, III-1, III-1(a), III-2, III-3, III-4, III-5, III-5(a), III-6 and III-6(a).

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. Most of the residence is below street view sight lines and the left and right side yard setbacks are far greater than required. The project complies with the above referenced Design Review Guidelines.

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 project is well within all of the codes for Zone A. The proposed improvements are placed on a stepped portion of the lot well below street level, are well integrated into the topography of the lot, the new upper floor and garage will be minimally seen from street grade. The project complies with the above referenced Design Review Guidelines.

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 addition, and additional parking is not required to prevent unreasonable short and/or long term parking impacts on the neighborhood. The project improves on-site parking. The project complies with Design Review Guidelines III-7 and III-7(a).

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review application of Mr. and Mrs. Salvo for construction at 505 Scenic Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

1. **Construction Management Plan.** A comprehensive Construction Management Plan shall be developed by the applicant. The Construction Management Plan shall address noise, vibrations, traffic control, parking, debris removal, dust control, sanitary facilities, 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 shall have 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 issuance of a Certificate of Occupancy.

2. **Construction Completion Schedule.** Work on the Project, once commenced, 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 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 of any further construction benchmarks and conditions of occupancy as may be determined by the Director of Public Works.

b. The Director of Public Works shall, before the Project commences, make a determination as to the completion dates applicable to the Project and such determination shall constitute the "Approved 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 Applicant'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 shall have the option at any time thereafter to make claim against the Applicant's Performance Security in order to complete such benchmark.

3. **Geotechnical Report and Review.** The Applicant shall submit a report prepared by a geotechnical engineer of the Applicant'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 Applicant's sole expense, shall retain an independent geotechnical consultant to perform a peer-review of the Applicant's geotechnical report and advise the City in connection with the Applicant'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. Said 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.

4. **Foundation/Shoring/Excavation Plan.** The Applicant shall submit foundation, excavation, and shoring plans prepared by a structural engineer that fully address issues of site shoring, fencing and hillside security issues. Said plans shall not require any trespassing or intruding into neighboring properties, and shall mitigate against any subsidence or other damage to neighboring properties. Such plans shall incorporate as appropriate the recommendations of the Applicant's geotechnical engineer and the City's geotechnical consultant, and shall be subject to approval by the City Engineer and the Chief Building Official.

5. **Stormwater BMPs for Construction.** Applicant shall implement 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. City Staff may impose additional requirements involving the prevention of storm water pollution during construction and permanent drainage, erosion and sediment control. These items will be reviewed as part of the Applicant's Construction Management Plan.

6. **Renovation / New Construction.** Pursuant to Section 17.32.6 of the Municipal Code, if for any reason more than 70% of the physical structure (as determined by the Building Official) is demolished or destroyed, the building shall conform to new Code requirements, including, but not limited to, the installation of a fire sprinkler system.

7. **Consultant Cost Recovery.** As the City must, in order to accommodate the scope and nature of the Project proposed by the Applicant, retain independent consultants with specialized expertise, the Applicant shall, prior to issuance of the building permit, make a cash deposit with the City in the amount of \$5,000 to be used to pay for the fees and expenses of such City consultants, or in any way otherwise required to be expended by the City for professional assistance (other than City Staff), in conjunction with the Project, 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 may require the Applicant to deposit additional funds to cover any further estimated fees and expenses associated with consultants retained by the City for the Applicant's Project. Any unexpended amounts shall be refunded to the Applicant within 90 days after the Project has an approved Final Inspection by the Chief Building Official.

8. **City Attorney Cost Recovery.** Due to the substantial additional commitment of City Attorney's time required to accommodate the scope and nature of the Project proposed by the Applicant, the Applicant shall, prior to commencement of construction, 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 Applicant to deposit additional funds to cover any further estimated additional City Attorney

time and expenses. Any unused amounts shall be refunded to the Applicant within 90 days after the Project has an approved Final Inspection by the Chief Building Official.

9. **Property Insurance.** The Applicant shall purchase and maintain property insurance on an “all-risk” policy form, including builder’s risk, in the amount of the initial total expected costs to complete the Project, plus the value of subsequent modifications and revisions, comprising total value for the entire Project on a replacement cost basis without optional deductibles. Such property insurance shall include interests of the Applicant, its contractor, subcontractors and sub-subcontractors in the Project, and shall be maintained until the entire Project has been completed and has an approved Final Inspection by the Chief Building Official.

10. **Contractor’s General Liability Insurance.** The Applicant shall require all contractors and subcontractors 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 \$1,000,000.00 per occurrence.

11. **Professional Liability Insurance.** The Applicant shall require its architect, any structural engineer, soils engineer, geotechnical engineer and other engineers and professional consultants retained to perform work relating to the Project to procure and maintain for a period of no fewer than 5 years after completion of the Project, professional liability insurance with coverage limits of no less than \$1,000,000.00 per claim.

12. **Insurance Cancellation Notice.** The Applicant shall require that all insurance policies obtained to satisfy any specific Condition of Approval provide the City with at least 10 days prior written notice from the insurance company of the cancellation of or change to any insurance coverage provided therein. Applicant shall immediately arrange for substitute insurance coverage to replace any such cancellation or change, subject to the approval of the City Attorney.

13. **Creditors’ Claims.** All security, funds or financial vehicles set forth in any of these Conditions of Approval shall be earmarked or dedicated so that they are not subject to creditors’ claims.

14. **CEQA Agreement.** The Applicant shall, pursuant to a form of agreement prepared by the City Attorney and executed by the Applicant, defend, at Applicant’s sole expense, indemnify and hold harmless the City of Piedmont, its elected and appointed officials, agents, officers and employees from and against any claim, demand, loss, liability, action or proceeding relating to, resulting from, or in connection with any determination, whether through its Planning Commission, City Council, City Staff, or otherwise, regarding applicability of the California Environmental Quality Act to the Applicant’s Project, including but not limited to any determination that a Categorical Exemption applies or that an Initial Study, a Negative

Declaration or an Environmental Impact Report is or is not required for the Project.

15. **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. This Project is eligible to participate in an 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, subject to continued availability of funds.

16. **Modifications to Conditions.** Any bonds, financial vehicles, insurance requirements or related Conditions of Approval may be modified in a reasonable manner with the joint agreement of the Director of Public Works and the City Attorney, provided that such modified Conditions of Approval continue to satisfy the general intent of the Condition as originally set forth herein.

17. **Final Landscape Plan.** The Applicant shall provide a Final Landscape Plan that shows trees proposed for retention as well as in-lieu trees required by a Certified Tree Preservation Plan. Such final plan shall also comply with the provisions of Section 17.17.3 of the Municipal Code, 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. The Final Landscape Plan shall be subject to staff review and approval prior to the issuance of a building permit.

18. **Subsidence Security.** The Applicant 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.

a. At the discretion of the Director of Public Works, City Engineer, and Building Official during plan check, prior to the issuance of building permits, the Applicant may be required to provide a specific cash deposit, bond, letter of credit, guarantee or other similar financial vehicle ("Subsidence Security") in the amount not to exceed \$200,000, as determined by the Director of Public Works, to provide immediately available funds for responding to, stemming and/or remediating any landslides, subsidence, creep, erosion or other geologic instability that may occur to any neighboring properties and which is triggered or caused in any way by Applicant's excavation, construction or any other activity relating to the Project and not immediately and fully rectified by Applicant to the satisfaction of the Director of Public Works. This decision will be made in part on the amount of construction and alteration to the existing foundation that will be proposed or necessary, and the conclusions of the geotechnical report and any peer reviews.

b. Proceeds from the Subsidence Security shall be 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 such proceeds are due and owing to the City. The City shall not be required to prove or otherwise establish in any way that such proceeds are required to respond to an incident of geologic instability, that Applicant is directly or indirectly responsible therefore, or any other prerequisites to the City's entitlement to collect such proceeds from the provided security.

c. The form and terms of the Subsidence Security shall be determined by the Director of Public Works after consultation with the Applicant, and shall not be fully released until the entire Project has been completed and has an approved Final Inspection by the Chief Building Official.

19. **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.

20. **Approved Plans.** The plans approved include information submitted on August 4, 2009, after notice was mailed to the neighbors, and the plans were available for review.

21. The indication of a fence on the submitted plans is not part of the current application. The existing fence may remain. If the existing fence is modified or destroyed during construction, the applicants shall submit a Fence Design Review application.

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 Thiel

Ayes: Kellogg, Robertson, Stehr, Thiel, Henn

Noes: None

Absent: Levine

**Variance, Design  
Review & Fence  
Design Review  
12 York Drive**

Mr. and Mrs. James Lord are requesting variance, design review and fence design review to convert an existing carport into a new 2-car garage; construct a new 4 ft. wood fence enclosing the front yard; add exterior lighting; and make other hardscape and landscape improvements. The requested variance is from Section 17.10.6 to allow a front yard setback of 6'6" in lieu of the code required minimum of a 20 ft. front yard setback.



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

**Public testimony** was received from:

James Lord described the scope and intent of the project, noting in particular the desire to increase vehicle security and eliminate the visibility of his cars from the street by converting the existing carport into a garage.

The Commission agreed that the design of the improvements was attractive and appropriate.

**Resolution 169-V-09**

WHEREAS, Mr. and Mrs. James Lord are requesting permission to convert an existing carport into a new 2-car garage; construct a new 4 ft. wood fence enclosing the front yard; add exterior lighting; and make other hardscape and landscape improvements located at 12 York Drive, 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 20 ft. 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 existing carport within the setback is being enclosed into a garage – there is no change in the size of the existing carport. 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 other homes in the neighborhood have garages and the proposed project is in keeping with the character of the neighborhood.
3. Accomplishing the improvement without a variance would cause unreasonable hardship in planning, design, or construction because it is impossible to make changes to the existing carport 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. Lord for the above variance at 12 York Drive, 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: Kellogg, Robertson, Stehr, Thiel, Henn

Noes: None

Absent: Levine

**Resolution 169-DR-09**

WHEREAS, Mr. and Mrs. James Lord are requesting permission to convert an existing carport into a new 2-car garage; construct a new 4 ft. wood fence enclosing the front yard; add exterior lighting; and make other hardscape and landscape improvements located at 12 York Drive, 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 project complies with Design Review Guidelines III-2, III-2(a), III-3, III-4, III-5, V-2, V-3, V-4, V-5, V-5(a) through (c), V-6, V-7, V-8 and V-9.
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 significant change in existing conditions. The project merely is adding walls and a garage door to an existing parking structure. The height of the proposed fence is allowable for a front yard. The project complies with Design Review Guideline III-5(a).
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 ingress/egress. The project complies with Design Review Guidelines III-6, III-6(a) and III-7.

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

1. 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 York Drive;

2. The proposed exterior light fixtures shall be downward-directed and less than 60 watts.

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 Robertson

Ayes: Kellogg, Robertson, Stehr, Thiel, Henn

Noes: None

Absent: Levine

**Variance and  
Design Review  
961 Kingston Avenue**

Mr. Eddie Ngo and Ms. Amy Chen are requesting variance and design review to develop habitable space in the basement to include a new bedroom, bathroom, and a half bath; make window and door modifications; make various changes to the interior, and add exterior lighting. The requested variance is from Section 17.16 to allow 3 rooms eligible for use as bedrooms with one conforming parking space in lieu of the code required minimum of two conforming parking spaces.

Written notice was provided to neighbors. **Five affirmative, one negative response forms** were received. **Correspondence** was received from: Stephen & Deborah Senter; Eddie & Amy Ngo

**Public testimony** was received from:

Eddie Ngo stated that because the neighborhood opposed an upward expansion of the home by a previous owner, he is proposing developing existing basement space to minimize neighbor impacts. He responded to Commission questions concerning driveway retaining walls by stating that the walls were constructed by a prior owner and he has no intention of modifying the walls at this time. He acknowledged that because of the narrowness of the driveway full use of the driveway is impeded. However, he can and does park one car in the driveway.

The Commission, with the exception of Alternate Commissioner Henn, supported variance approval, noting that the only possible way of adding a garage to this extremely narrow but deep lot would be under the house which would necessitate an upward expansion of the home that is opposed by the neighborhood. Variance approval was justified because of the physical constraints of the lot and the desirability of minimizing adverse impacts on adjacent residences. The Commission

felt that the applicant's request to add a 3<sup>rd</sup> bedroom to the home is reasonable and consistent with neighborhood standards and expanding the home downward, rather than upward, preserves neighbor views and privacy. However, Commissioner Thiel felt that the design of the project could be improved, mentioning in particular the front fenestrations and window articulation. Alternate Commissioner Henn preferred that a survey be conducted to determine if the existing retaining walls could be modified/removed so as to widen the driveway to create the possibility of two, tandem parking spaces. The Commission majority responded that retaining wall modification would constitute an unreasonable hardship, especially given the fact that conforming parking would still not be created and the aesthetics of the property would be diminished.

**Resolution 176-V-09**

WHEREAS, Mr. Eddie Ngo and Ms. Amy Chen are requesting permission to develop habitable space in the basement to include a new bedroom, bathroom, and a half bath; make window and door modifications; make various changes to the interior, and add exterior lighting located at 961 Kingston 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 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 size of the lot at the front which makes it impossible to access a rear located garage. 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 living space expansion is occurring beneath the house, the project does not increase the size of the home's existing footprint.
3. Accomplishing the improvement without a variance would cause unreasonable hardship in planning, design, or construction because the lot already exists and is bordered by retaining walls on two sides.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the variance application of Mr. Ngo and Ms. Chen for the above variance at 961 Kingston 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 Robertson, Seconded by Stehr

Ayes: Kellogg, Robertson, Stehr, Thiel

Noes: Henn

Absent: Levine

**Resolution 176-DR-09**

WHEREAS, Mr. Eddie Ngo and Ms. Amy Chen are requesting permission to develop habitable space in the basement to include a new bedroom, bathroom, and a half bath; make window and door modifications; make various changes to the interior, and add exterior lighting located at 961 Kingston 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 project complies with Design Review Guidelines II-1, II-2, II-3, II-3(a) and (c), II-7 and II-7(a).
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 increase in the existing size of the footprint and proposed windows face the street. The project complies with Design Review Guidelines II-7 and II-7(a).
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 to 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. Ngo and Ms. Chen for construction at 961 Kingston Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

1. 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 Kingston Avenue;
2. The new windows shall be the same color as the existing windows in the remainder of the residence; and
3. The proposed exterior light shall have an opaque or translucent shade that completely covers the light bulb

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 Robertson, Seconded by Stehr

Ayes: Kellogg, Robertson, Stehr

Noes: Thiel, Henn

Absent: Levine

**Design Review and  
Fence Design Review  
1535 Grand Avenue**

Mr. Buck O'Neil and Ms. Melissa Carpenter are requesting design review and fence design review to demolish the existing garage, construct a new 1-car garage in the basement; construct a new driveway with access from Grand Avenue, develop habitable space including a bedroom and a bathroom at the basement level; make various changes to the interior, construct additional fencing and add a guardrail within the 20 ft. setback along Cambridge Way; make window and door modifications; make various hardscape and landscape changes; seek retroactive approval of the existing air conditioning unit and electrical meter and panel in the rear yard.

The Commission denied a similar application on May 11, 2009.

Written notice was provided to neighbors. **Three affirmative, three negative response forms** were received. **Correspondence** was received from: Ben & Pat Dresser; Tracy & Mark D'Ambrosi; Regina Marchione; Mark D'Ambrosi;

**Public testimony** was received from:

Melissa Carpenter explained that the goal of the project is to improve the aesthetics and usability of her rear yard by removing an old garage/shed and constructing a new 1-car garage under the house for better personal and vehicle security.

Bruce Tomb, Project Architect, described project details and noted that recommendations from the project traffic engineer and arborist will be followed. He noted that a landscaped fence is planned to infill the space vacated by the removal of the old garage/shed. He discussed with the Commission issues related to driveway sight lines, stating that relocating the driveway slightly to the right to increase its distance from a crosswalk would result in sight line impediments caused by a mature City street tree as well as disrupt the symmetry of the home's front façade. He stressed that the project traffic engineer has determined that the proposed driveway placement is safe. He also noted that garage access from the Cambridge side of the property is not possible because of structural reasons. He also noted the existing hodge podge of window treatments on the house.

Mark D'Ambrosi opposed the removal of the old garage/shed citing a loss of privacy and felt that the proposed garage and driveway plan was unsafe. He cited police accident reports for this complex intersection and suggested the Commission request the police department to inspect the garage/driveway plan. He also noted that his survey of his property is in conflict with the applicant's survey of their shared property line and as a consequence the exact location of the infill fence may change.

The Commission acknowledged the property's unique and difficult site conditions in voicing support for application approval, agreeing that locating a new garage under the house was the most sensible solution and an acceptable plan according to the traffic engineer. The Commission agreed that Cambridge side garage access is not possible because of grade changes. The Commission noted that the design is a creative solution for enhancing the usability of the rear yard and home, increasing greenspace and improving off-street parking without adding more mass or bulk or changing the existing footprint. The house is an existing 4 bedroom residence and will remain a 4 bedroom home. However, the Commission requested that the City's traffic engineer conduct a peer review of the applicant's traffic engineer's report regarding the driveway plan and that window treatments be modified so as to comply with the City's Window Policy.

**Resolution 177-DR-09**

WHEREAS, Mr. Buck O'Neil and Ms. Melissa Carpenter are requesting permission to demolish the existing garage, construct a new 1-car garage in the basement; construct a new driveway with access from Grand Avenue, develop habitable space including a bedroom and a bathroom at the basement level; make various changes to the interior, construct additional fencing and add a guardrail within the 20 ft. setback along Cambridge Way; make window and door modifications; make various hardscape and landscape changes; seek retroactive approval of the existing air conditioning unit and electrical meter and panel in the rear yard located at 1535 Grand 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 proposal complies with Design Review Guidelines II-1, II-2, II-3, II-3(b). The extension of the existing fence complies with Design Review Guidelines V-1, V-2, V-5, V-5(a) through (c), V-6, V-7, V-9 and V-10. There are no changes to the existing footprint and architectural style 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 is little material impact. The addition is occurring under the existing building. The project complies Design Review Guidelines II-3(b) and II-6(a).
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 as indicated by the applicant's traffic engineer and as to be confirmed by the City's traffic engineer as a condition of approval. The project complies with Design Review Guideline II-7.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review application of Mr. O'Neil and Ms. Carpenter for construction at 1535 Grand Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

1. Based on the scope and nature of the proposed landscape and development plans, a best management practice plan for construction which complies with the Alameda Countywide Clean Water Program General and Residential Conditions of Approval will need to be developed by the applicant prior to obtaining a building permit;
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 Grand Avenue and Cambridge Way;
3. Prior to the scheduling of an initial inspection, the applicants shall submit written verification from a licensed acoustical engineer that a post-construction field test confirms the A/C unit's compliance with the 50 decibel limit at the property line as required by Section 5.2.20 of the Piedmont Building Code. Should the A/C unit be in violation of Section 5.2.20 requirements, the applicants shall take one of the following three actions:
  - a) the applicants shall remove the A/C unit;
  - b) the applicants shall submit an application for Design Review for the replacement of the A/C unit with an



- alternate A/C unit that complies with Section 5.2.20 requirements; or
- c) the applicants shall submit an application for Design Review for modifications to the A/C unit that could potentially involve relocation or the construction of a sound wall that brings it into compliance with Section 5.2.20 requirements;
4. The proposed garage door shall be electronically operated;
  5. The proposed guardrail at the window well shall be painted to match the existing rear deck guardrail;
  6. The new windows shall be the same color as the remaining existing windows;
  7. Any new divided light grills shall be true or three dimensional simulated;
  8. The electrical panel and meter shall be painted to match the surrounding wall;
  9. The City's Traffic Engineer shall approve and confirm the applicant's traffic report; said peer review shall be paid for by the applicant; and
  10. While the design and configuration of proposed windows are acceptable, window treatment details and materials shall be modified as necessary to be consistent with the City's Window Policy; said modifications shall be subject to staff review and approval.

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 Robertson

Ayes: Kellogg, Robertson, Stehr, Thiel, Henn

Noes: None

Absent: Levine

By procedural motion, moved by Henn, seconded by Robertson and carried, the Commission agreed to extend tonight's meeting to complete agenda consideration.

**Variance and  
Design Review**

Mr. and Mrs. Heesuk Kim are requesting variance and design review to make modifications to the residence, including: demolish the

**210 Pacific Avenue**

existing rear deck and sun porch, remove the roof; expand the house approximately 694 sq. ft. by adding rear bays to the main and lower levels and adding a new upper level master bedroom suite; construct new and expanded rear decks at the upper, main and lower levels, and an enclosed storage area under the lower level deck; make door and window modifications, make various changes to the interior; alter the garage by adding a gable roof, changing the wall material, replacing the garage door, and adding a side door and stair; add exterior lighting and make various hardscape and landscape improvements. The requested variances are from: (1) Section 17.10.6 to allow the new garage eave to extend to within 1'11" and the new garage side stair to extend to within 17'4" 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 remodeled garage to extend to the right (north) 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 (4<sup>th</sup> bedroom) with two covered parking spaces each measuring 8'10" by 17'6" in lieu of the code required minimum parking dimension of 9 ft. by 20 ft.

The Commission denied a similar application on May 11, 2009.

Written notice was provided to neighbors. **Six affirmative, five negative response forms** were received. **Correspondence** was received from: Anna Baer, Don & Karin Mai; Lynn & Jim Saunders; David Baer & Linda Dubins

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

**Public testimony** was received from:

Edward Buchanan and Glen Jarvis, Project Architects, described the changes made in response to the May meeting, noting that the height of the addition has been made as low as possible to minimize impacts on adjacent neighbors, no significant neighbor views are involved, the size of the remodeled residence is comparable to that of other homes in the neighborhood and the improvements are well integrated into the architecture of the early 1900's craftsman-style residence.

Linda Dubins and David Baer referenced their submitted documentation and photographs in opposing the project. They cited a loss of light and view to their kitchen window and a loss of privacy to their master bedroom. In addition, they opposed the decks, citing privacy and acoustical impacts and objected to any proposal for the planting of an evergreen tree screen, citing mess and root encroachment. They also stressed that because the homes are so close together (5'3"), they feared that the addition would create a wind tunnel between the two properties.

Lynn Saunders opposed the project, citing loss of important view corridors and property value.

Karin Mai voiced concern that application approval would set an undesirable precedent for other homeowners in the neighborhood to expand upward which would adversely impact neighboring views and property values.

Hong Kim noted that because of the close proximity of homes, there is very little privacy now and his addition will not worsen the situation. He also noted that the Dubins/Baer's were allowed to add a deck to their home even though he objected on the basis of a loss of privacy.

The Commission agreed that the project was beautifully designed and well integrated into the existing residence. In voicing support for the project, the Commission noted: (1) that because of the close proximity and narrow lots of the neighborhood, impact from home improvements are unavoidable; (2) while there will be a loss of light to the kitchen window at 214 Pacific, the panoramic, spectacular views of 214 are not impacted by the proposal; (3) the altered garage will accommodate the parking of two vehicles even if it is slightly undersized; and (4) the improvements have been sensitively sited and designed to minimize neighbor view impacts – the upper floor has been set back from the lower level to maximize separation distance. However, the Commission agreed that privacy intrusion caused by the three levels of decks could be reduced if the width/size of the main floor deck was reduced to the size proposed for the 3<sup>rd</sup> floor level.

**Resolution 178-V-09**

WHEREAS, Mr. and Mrs. Heesuk Kim are requesting permission to make modifications to the residence, including: demolish the existing rear deck and sun porch, remove the roof; expand the house approximately 694 sq. ft. by adding rear bays to the main and lower levels and adding a new upper level master bedroom suite; construct new and expanded rear decks at the upper, main and lower levels, and an enclosed storage area under the lower level deck; make door and window modifications, make various changes to the interior; alter the garage by adding a gable roof, changing the wall material, replacing the garage door, and adding a side door and stair; add exterior lighting and make various hardscape and landscape improvements located at 210 Pacific Avenue, Piedmont, California, which construction requires variance; and

WHEREAS, variances from the requirements of Chapter 17 of the Piedmont City Code are necessary in order to construct within the 20 ft. front yard setback, construct within the 4 ft. right (north) side yard setback, and increase from 3 to 4 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 the garage and home are already existing within the setback – the variance is a pre-existing situation. 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 existing garage is being modified in its existing location. While the size of the altered garage is slightly non-conforming, the garage will accommodate the parking of two vehicles.
3. Accomplishing the improvement without variance would cause unreasonable hardship in planning, design, or construction because the variance situation is pre-existing.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the variance application of Mr. and Mrs. Kim for the above variances at 210 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 Robertson, Seconded by Henn

Ayes: Kellogg, Robertson, Stehr, Henn

Noes: None

Recused: Thiel

Absent: Levine

#### **Resolution 178-DR-09**

WHEREAS, Mr. and Mrs. Heesuk Kim are requesting permission to make modifications to the residence, including: demolish the existing rear deck and sun porch, remove the roof; expand the house approximately 694 sq. ft. by adding rear bays to the main and lower levels and adding a new upper level master bedroom suite; construct new and expanded rear decks at the upper, main and lower levels, and an enclosed storage area under the lower level deck; make door and window modifications, make various changes to the interior; alter the garage by adding a gable roof, changing the wall material, replacing the garage door, and adding a side door and stair; add exterior lighting and make various hardscape and landscape improvements located at 210 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 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 have been used to reduce losses of ambient and reflected light. The project complies with Design Review Guidelines II-1, II-2, II-3, II-3(a) through (d), III-1(a), III-2, III-2(a), III-3. As conditioned to reduce the width of the main level deck, the project complies with Design Review Guidelines II-6, II-6(a) and (b) and II-7 in that the modified deck respects the visual and acoustical privacy of neighbors.

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. Consideration was given to minimizing the height and roof slopes of the addition to create the least amount of impact. The project complies with the above referenced Design Review Guidelines.

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 are visually compatible with the massing of neighboring homes. The project complies with the above referenced Design Review Guidelines.

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 to existing garage ingress and egress traffic patterns. The project complies with Design Review Guidelines III-2, III-2(a), III-3, III-4, III-5, III-6 and III-7.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review application of Mr. and Mrs. Kim for construction at 210 Pacific Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

1. **Construction Management Plan.** A comprehensive Construction Management Plan shall be developed by the applicant. The Construction Management Plan shall address noise, vibrations, traffic control, parking, debris removal, dust control, sanitary facilities, and other potential construction impacts, as well as other details involving the means and methods of completing the Project including

the construction route. The Chief Building Official shall have 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 issuance of a Certificate of Occupancy.

2. **Construction Completion Schedule.** Work on the Project, once commenced, 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 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 of any further construction benchmarks and conditions of occupancy as may be determined by the Director of Public Works.

b. The Director of Public Works shall, before the Project commences, make a determination as to the completion dates applicable to the Project and such determination shall constitute the "Approved 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 Applicant'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 shall have the option at any time thereafter to make claim against the Applicant's Performance Security in order to complete such benchmark.

3. **Stormwater BMPs for Construction.** Applicant shall implement 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. City Staff may impose additional requirements involving the prevention of storm water pollution during construction and permanent drainage, erosion and sediment control. These items will be reviewed as part of the Applicant's Construction Management Plan.

4. **CEQA Agreement.** The Applicant shall, pursuant to a form of agreement prepared by the City Attorney and executed by the Applicant, defend, at Applicant's sole expense, indemnify and hold

harmless the City of Piedmont, its elected and appointed officials, agents, officers and employees from and against any claim, demand, loss, liability, action or proceeding relating to, resulting from, or in connection with any determination, whether through its Planning Commission, City Council, City Staff, or otherwise, regarding applicability of the California Environmental Quality Act to the Applicant's Project, including but not limited to any determination that a Categorical Exemption applies or that an Initial Study, a Negative Declaration or an Environmental Impact Report is or is not required for the Project.

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. This Project is eligible to participate in an 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, subject to continued availability of funds.

6. **Modifications to Conditions.** Any bonds, financial vehicles, insurance requirements or related Conditions of Approval may be modified in a reasonable manner with the joint agreement of the Director of Public Works and the City Attorney, provided that such modified Conditions of Approval continue to satisfy the general intent of the Condition as originally set forth herein.

7. **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.

8. **Decks.** The width of the main level deck shall be reduced to the same width as the upper level deck and shall be centered directly below the upper level deck; said design modification shall be subject to staff review and approval.

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 Robertson, Seconded by Henn

Ayes: Kellogg, Robertson, Stehr, Henn

Noes: None

Recused: Thiel

Absent: Levine

## ADJOURNMENT

There being no further business, Chairman Kellogg adjourned the meeting at 12:45 a.m.

