

# **PIEDMONT PLANNING COMMISSION**

## **Regular Meeting Minutes for Monday February 9, 2009**

A Regular Session of the Piedmont Planning Commission was held February 9, 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 January 30, 2009.

### **CALL TO ORDER**

Chairman Stehr called the meeting to order at 5:00 p.m. She introduced and welcomed the planning department's newest Planning Technician Manira Sandhir

### **ROLL CALL**

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

Absent: Commissioners Jonathan Levine and Clark Thiel (both excused)

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

City Council Liaison: Councilmember John Chiang

### **CONSENT CALENDAR**

The following Resolutions were approved under one vote by the Commission:

#### **Fence Design Review 91 Selborne Drive**

#### **Resolution 5-DR-09**

WHEREAS, Mr. Charles Novack and Ms. Maureen Dellinger are requesting permission to make modifications to the front of the residence, including: a new gate and landing with pillars and an iron fence in the front yard; a new lily pond in the front side yard; and various hardscape and landscape changes located at 91 Selborne 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 applicants are replacing an existing iron fence doorway to the side yard, with two brick pillars and a new iron fence doorway that functions better and is approximately the same size.
2. The design is appropriate, considering its effect on neighboring properties' existing views, privacy and access to direct and indirect light because of the project's low height and relationship to windows and outdoor living space of adjacent 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 there is no impact on circulation patterns. The location of the fence and pond is set back far enough so as not to affect traffic patterns.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review application of Mr. Novack and Ms. Dellinger for construction at 91 Selborne Drive, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following condition:

- The approved plans are those submitted on January 28, 2009, after neighbors were notified of the project and the plans were available for public review;

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 Kellogg

Ayes: Kellogg, Robertson, Stehr, Henn

Noes: None

Absent: Levine, Thiel

## **PUBLIC FORUM**

Joannie Semitekoll urged the Commission to become involved in the review of proposed sports-related improvements to Coaches Playfield and Blair Park, requesting that the same quality of life protections the Commission affords to neighbors in private construction projects be extended to City projects. In particular, she requested that the Commission require that story poles be erected at Coaches Playfield to indicate the height of proposed field lighting standards and that story poles be erected at Blair Park to indicate the height of proposed retaining walls, fencing and changes in grade. She felt that the presence of story poles would alert residents to the major changes being proposed at these two locations.

## **APPROVAL OF MINUTES**

### **Resolution 4-PL-08**

RESOLVED, that the Planning Commission approves as submitted its meeting minutes of January 12, 2009.

Moved by Kellogg, Seconded by Robertson

Ayes: Kellogg, Robertson, Stehr, Henn

Noes: None

Absent: Levine, Thiel

## **REGULAR CALENDAR**

The Commission considered the following items of regular business:

### **Draft General Plan**

Chairman Stehr opened the second of two public hearings on the City's Draft General Plan and Mitigated Negative Declaration (first hearing was

January 12, 2009). Mr. Barry Miller, the City's General Plan Update Consultant, summarized the two-year process of review, highlighted the major differences in Plan content and format between the proposed Draft and the 1996 General Plan and noted that public comments on the Draft have been incorporated and responded to in the Plan. He noted that the Plan has been revised in response to public comment as indicated in the "Plan Addendum." After tonight's review, he requested that the Commission recommend Council adoption of the Draft Plan, including the "Plan Addendum," and Mitigated Negative Declaration so that the documentation can be forwarded to the City Council for additional public review, comment and City Council action.

**Public testimony** was received from:

Lynn Dee, Randy Wedding, Sandra Pohutsky and Ralph Catalano, all Moraga Canyon area residents, voiced concern over the proposed sports field development of Blair Park. In particular, Messrs. Wedding and Catalano felt that the proposed Draft Plan failed to adequately address and respond to the Blair Park development proposal, especially given that the proposed development appears to be contrary to many of the Plan's goals and objectives regarding *Open Space*. Ms. Pohutsky, a City of Oakland resident, voiced concern over the Plan's statement that traffic studies indicate that there has been a reduction in traffic flow on Moraga Avenue since 1994, strongly suggesting that this statement is wrong. She also urged that the City of Piedmont keep Oakland residents who live along Moraga Avenue fully informed regarding any development proposals for Blair Park.

The Commission commended Mr. Miller on his efforts, acknowledged the numerous worksessions and public hearings held to review the Draft, disagreed with speakers that the Draft Plan fails to address or is contrary to the proposed Blair Park development, stressing that the Draft Plan contains policies and goals that any Blair Park project must satisfy. The Commission stated that the Blair Park project is in the very early stage of development and will be thoroughly reviewed when the environmental reports are completed. The Commission added that the Blair Park and Coaches Playfield projects are consistent with the Draft Plan's definition/designation of *Open Space*. However, the Commission requested Mr. Miller to ascertain if the Draft Plan's open space designation for Blair Park uses the same exact language as the 1996 Plan.

**Resolution 5-PL-09**

WHEREAS, State law requires every city and county in California to adopt a General Plan for its long-range development, and further, to periodically update that Plan to reflect current conditions and issues; and

WHEREAS, the Piedmont General Plan was adopted in February 1996 and is now 13 years old; and

WHEREAS, the City Council authorized an update of the General Plan in 2007 to ensure that the Plan remained legally adequate and relevant; and

WHEREAS, the City has completed an almost two-year process of collecting and analyzing data about Piedmont, and preparing new General Plan text, goals, policies, actions, and maps; and

WHEREAS, the public has participated in this process through a community workshop, seven publicly noticed Planning Commission work sessions, and a four-page resident survey returned by nearly one-third of all Piedmont households; and

WHEREAS, the proposed Plan reflects input from those who participated and incorporates current priorities and an updated vision for Piedmont; and

WHEREAS, the proposed Plan conforms to the provisions of the State Government Code for General Plans, as well as the most recent California General Plan Guidelines; and

WHEREAS, the City has completed state-mandated environmental review procedures for the project and has prepared a separate resolution for a Mitigated Negative Declaration; and

WHEREAS, the Planning Commission has held two public hearings on the December 2008 Public Review Draft General Plan; and

WHEREAS, a Plan Addendum has been prepared incorporating responses to comments from Commissioners, residents, and other agencies on the Public Review Draft; and

WHEREAS, this Addendum is now incorporated by reference into the December 2008 Draft;

NOW THEREFORE BE IT RESOLVED that the Planning Commission of the City of Piedmont recommends adoption of the updated Piedmont General Plan, inclusive of the Plan Addendum, by the Piedmont City Council.

Moved by Robertson, Seconded by Kellogg

Ayes: Kellogg, Robertson, Stehr, Henn

Noes: None

Absent: Levine, Thiel

**Resolution 6-PL-09**

WHEREAS, the City of Piedmont has completed an update of its General Plan; and

WHEREAS, a General Plan Update is defined as a “project” under the California Environmental Quality Act and is thus subject to environmental review; and

WHEREAS Piedmont is a built-out city with no ability to annex land and very few opportunities for development or redevelopment; and

WHEREAS, the updated Piedmont General Plan proposes no significant changes to the City’s land use or transportation maps, and forecasts fewer than 40 additional housing units and 30 additional jobs on scattered sites over a 20-year period, consistent with ABAG projections and the previous (1996) General Plan; and

WHEREAS, the proposed Piedmont General Plan includes numerous environmental protection policies that are absent in the existing (1996) General Plan; and

WHEREAS, the City completed an Initial Study of the proposed General Plan and determined that the potential for significant impacts could be mitigated; and

WHEREAS, CEQA does not require a detailed evaluation of all projects that could conceivably be developed consistent with General Plan policies but rather requires the City to conduct project-level environmental review for subsequent projects; and

WHEREAS, the City prepared a Mitigated Negative Declaration for the General Plan and delivered copies of the Initial Study-Mitigated Negative Declaration (IS-MND) to the State Clearinghouse and other interested parties and agencies on December 16, 2008; and

WHEREAS, the City provided public notice of the availability of the IS-MND for public review and posted copies of the document on its website for over 45 days; and

WHEREAS, the comment period for the IS-MND has ended, and the City has responded to comments and made appropriate edits to the Draft Plan and IS-MND; and

WHEREAS, the IS-MND includes a mitigation monitoring program, pursuant to state law;

NOW THEREFORE BE IT RESOLVED that the Planning Commission recommends adoption of the Piedmont General Plan Update Mitigated Negative Declaration and Mitigation Monitoring Program by the City Council.

Moved by Robertson, Seconded by Kellogg

Ayes: Kellogg, Robertson, Stehr, Henn

Noes: None

Absent: Levine, Thiel

**Non-Residential  
Sign Design Review  
370 Highland Avenue**

McKean & McMills and Edward Jones Investments are requesting non-residential design review to install two building-mounted metal signs on the north-facing brick wall on Highland Way. One sign is for McKean & McMills and one sign is for Edward Jones Investments. The signs consist of 4 inch gold brass lettering and will be aligned on opposite ends of the north-facing brick wall. No internal or external illumination is proposed.

Written notice was provided to neighbors. **No response forms** were received.

**Public testimony** was received from:

Kenneth McKean of McKean & McMills and Jerry Ostrander of Edward Jones stated that the existing building signage is confusing to clients and the proposed new signage will more clearly direct clients to the most convenient access route to their respective offices. The exact design of the proposed signage has not yet been finalized, but it will consist of free-standing brass letters approximately 4 inches in height. They added that

the existing “360-370” sign on the north wall of the building will be removed.

The Commission agreed that the proposed signs are tastefully designed, appropriate in size and scale to the building and will help identify the building’s separate entrances and multiple tenants.

**Resolution 347-DR-08**

WHEREAS, McKean & McMills and Edward Jones Investments are requesting permission to install two building-mounted metal signs on the north-facing brick wall located at 370 Highland Way, Piedmont, California, which construction requires non-residential 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. Two signs are needed because there are separate entrances and multiple tenants that will benefit from clear direction.
2. The signs, including a sign required by law, are simple in design. The proposed 4-inch individual brass letters are tasteful and small.
3. The signs are compatible in design, color and scale to the front of the building, adjoining structures and general surroundings. The building has essentially three frontages. The proposed signs are appropriate because of their tasteful brass style and small size.
4. The signs are oriented toward the pedestrian and vehicular traffic. The signs are visible from Highland Way and Piedmont Community Church.
5. The signs are constructed of sturdy materials. The sign consists of antique brass letters individually mounted on the brick building similar to the existing Wells Fargo Bank mounted signage.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review application of McKean & McMills and Edward Jones Investments for sign installation at 370 Highland Way, 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 Kellogg

Ayes: Kellogg, Robertson, Stehr, Henn  
Noes: None  
Absent: Levine, Thiel

The Commission recessed for dinner at 6:05 p.m. and reconvened at 6:35 p.m.

**Variance, Design  
Review & Retaining  
Wall Design Review  
120 Dracena Avenue**

Mr. and Mrs. Michael Greening are requesting variance, design review and retaining wall design review to construct a new sub-level 2-car garage through excavation and a 171 sq. ft. expansion; construct a new driveway, new garbage enclosure and new retaining walls in the front yard; add a new front terrace atop the new garage; replace the existing front trellis with a new trellis; make window and door modifications; add exterior lighting; and make various changes to the interior of the basement level. The requested variances are from: (1) Section 17.10.5 to allow a building height of 40 ft. in lieu of the code permitted maximum height of 35 ft.; (2) Section 17.10.6 to allow the trellis over the garage door to be 10'3" from the front property line in lieu of the code required minimum of a 20 ft. front yard setback; and (3) Section 17.22.2.(b) to allow a floor area ratio of 73.2% in lieu of the code permitted maximum FAR of 50% for this size parcel.

Written notice was provided to neighbors. **Correspondence** was received from: Roger Ashton, Jan. 7; Grier Graff, Jan. 7 & Feb. 5.

**Public testimony** was received from:

Grier Graff, Project Architect, stated that the applicant's home is the only residence on the block without a covered parking structure. He reviewed the several location options for the proposed 2-car garage that were examined but ultimately rejected because they created too much mass, impaired driveway sight lines or resulted in an unattractive front elevation. He added that excavating under the house and placing the garage underneath was not practical for economic and structural reasons.

Michael Greening stated his desire to provide covered parking for his cars, felt that the proposed design created the least impact on adjacent neighbors and stated that the existing hedge and trees will be retained. He added that any vegetation that is lost as a result of construction will be replaced to maintain a privacy buffer between his property and that of his neighbors. He noted that the terrace over the garage is not intended as outdoor living space but as an attractive treatment of the garage roof.

John Lambert supported application approval but requested that the applicant's trash cans be kept in the garage or rear or side yard so he will not view them from his home.

Roger Ashton cited concerns over detrimental impact on streetscape aesthetics, hillside excavation, loss of landscaping, visibility of the trash enclosure and the terrace over the garage. He requested that the roof terrace component of the project be eliminated.

The Commission agreed as to the desirability of a 2-car garage for the 5-bedroom house and the attractiveness of the proposed design. It concurred that the proposed location for the garage was the most logical place on the property and that variance approval was justified. However,

to minimize living space encroachment into the front setback, the Commission requested that the proposed terrace be pulled back (approximately 6 ft.) so as to align with an existing terrace and that a pitched roof be added over this vacated space. As to the neighbor's concern over the visibility of the trash enclosure, the Commission suggested that either the applicant slightly reduce existing structure coverage to offset any additional coverage created by adding a roof/vine covered trellis over the enclosure or that the trash containers be stored in the garage.

**Resolution 348-V-09**

WHEREAS, Mr. and Mrs. Michael Greening are requesting permission to construct a new sub-level 2-car garage through excavation and a 171 sq. ft. expansion; construct a new driveway, new garbage enclosure and new retaining walls in the front yard; add a new front terrace atop the new garage; replace the existing front trellis with a new trellis; make window and door modifications; add exterior lighting; and make various changes to the interior of the basement level located at 120 Dracena 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 front 20 ft. setback, exceed the 35 ft. building height limit and exceed the 50% floor area ratio 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:
  - *With regard to the front yard setback:* the slope of the property and the position of the house on the lot.
  - *With regard to building height and FAR:* these are pre-existing variance situations that are only being minimally increased by connecting the garage structure to the house.

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 all other homes on this block have covered off-street parking. The project does not increase the existing size or living potential of the home. The proposed project is the best solution for providing appropriate vehicular circulation in and out of the property from the street.

3. Accomplishing the improvement without variance would cause unreasonable hardship in planning, design, or construction because it is not economically feasible to construct a garage underneath the house and constructing a detached garage at the front property line would create too much impact on streetscape aesthetics and pedestrian/traffic safety.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the variance application of Mr.



and Mrs. Greening for the above variances at 120 Dracena Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following condition:

- The design of the roof terrace shall be modified so as to pull back this terrace approximately 6 ft. to align with an existing terrace above the second level of the home because there is no compelling reason for this terrace to extend as far as proposed into the front setback. The design of the garage roof in the area where the terrace has been pulled back shall be integrated into the front elevation with a pitched roof. The design of this roof shall be in keeping with the style, material and detailing of the existing roof on the home. The overhang of this roof shall extend no further than the ornamental trim (approximately 1'6" from the front face of the garage). Design modifications to the terrace and garage roof 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 Kellogg, Seconded by Henn

Ayes: Kellogg, Robertson, Stehr, Henn

Noes: None

Absent: Levine, Thiel

#### **Resolution 348-DR-09**

WHEREAS, Mr. and Mrs. Michael Greening are requesting permission to construct a new sub-level 2-car garage through excavation and a 171 sq. ft. expansion; construct a new driveway, new garbage enclosure and new retaining walls in the front yard; add a new front terrace atop the new garage; replace the existing front trellis with a new trellis; make window and door modifications; add exterior lighting; and make various changes to the interior of the basement level located at 120 Dracena 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/are not necessary to reduce losses of ambient and reflected light. The proposed design complies with Design Review Guidelines II-1, II-3(a) & (b), III-1, and III-2. The addition of the garage is not a material change to the overall massing of the house, it is an extension at the lowest level at grade, provides correct circulation in and out of the property and is appropriate in relation to the existing residence. The retaining wall complies with Design Review Guideline IV-1, IV-2 and IV-3.

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 project complies with Design Review Guidelines III-5 and III-6 in that it is the best location for a garage. The garage is tucked into the topography of the lot to minimize impact on neighbor light, view and openness.

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 complies with Design Review Guideline II-1 and II-2. There is no change to the existing enclosed structure, except for the projection of the garage at the very lowest level at grade.

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 project complies with Design Review Guidelines II-7 and III-7. The proposed improvements remove cars from the street and provide adequate ingress/egress from the driveway. Pedestrian and traffic sight lines are not impeded.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review application of Mr. and Mrs. Greening for construction at 120 Dracena Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

1. The garage door shall be electronically operated;
2. At the curb, the new driveway shall be a maximum 12 ft. in width and centered between the street trees so that the roots of adjacent street trees are minimally disturbed and the health of the street trees is preserved;
3. The applicants shall work with City staff to verify the location and depth of the sanitary sewer main and easement at the front of the property prior to the issuance of a building permit and any excavation and construction of the new driveway and retaining walls;

4. Prior to the issuance of a building permit, the applicants shall apply and pay for an encroachment permit for the construction of the new retaining walls located in the City's street right-of-way and any sewer easement at the front of the property;
5. 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;
6. 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 Dracena Avenue;
7. Compliance with Chapter 9 Article III of the Municipal Code which governs the recycling of construction and demolition debris is required; and
8. The applicant shall provide a specific cash deposit, letter of credit, deposit, letter of credit, bank guarantee, bond, or other similar financial vehicle ("City Facilities Security") in the amount of \$100,000, as established by the Director of Public Works, to cover the cost of any damage to City property or facilities in any way caused by Applicant, Applicant's contractors or subcontractors, or any of their agents, employees or assigns, or others working for or on behalf of Applicant on this Project, and related in any way to the Project. The form and terms of such City Facilities Security shall be determined by the Director of Public Works after consultation with the Applicant.
  - a. To provide clear baseline information to assist in determining whether damage to the City's facilities has been caused by the Applicant or others working for or on behalf of Applicant on this Project, 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 such streets and facilities, and 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 such documentation, the City may possibly hose or water down the streets to better emphasize any cracks or damage in the surface thereof. The Applicant shall be responsible for the full cost of all such documentation and related work, and shall reimburse the City therefore within 21 days after receiving written notification of the work performed and the amount to be reimbursed.

9. The design of the roof terrace shall be modified so as to pull back this terrace approximately 6 ft. to align with an existing terrace above the second level of the home because there is no compelling reason for this terrace to extend as far as proposed into the front setback. The design of the garage roof in the area where the terrace has been pulled back shall be integrated into the front elevation with a pitched roof. The design of this roof shall be in keeping with the style, material and detailing of the existing roof on the home. The overhang of this roof shall extend no further than the ornamental trim (approximately 1'6" from the front face of the garage). Design modifications to the terrace and garage roof shall be subject to staff review and approval.
10. The proposed trash enclosure shall be screened with landscaping as proposed in the submitted plans, either saving the existing landscaping or replacing any landscaping that is removed with appropriate evergreen landscaping as noted. Said landscaping shall be maintained for a period not less than 5 years.

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 Kellogg, Seconded by Robertson

Ayes: Kellogg, Robertson, Stehr, Henn

Noes: None

Absent: Levine, Thiel

**Conditional Use Permit** Reverend Lois Mueller on behalf of the Plymouth United Church of  
**424 Monte Vista Avenue** Christ and Mr. Eric Nelson on behalf of the Pacific Boychoir Academy are requesting a conditional use permit to allow the Pacific Boychoir Academy to use the parking lot located between 15 and 27 Olive Avenue to drop off and pick-up 35 to 50 students in the mornings and evenings; parking for staff and special events; parking and recreation for up to 150 evening choir students; and daytime recreation for students. This lot will also continue to be used by the Plymouth United Church of Christ.

*Requested CUP Term:* Six years, beginning on the date the Academy school opens;

*Requested CUP Provisions:*

**North Lot: September through Mid-June (up to 50 Student Enrollment, 8 Staff)**

Weekdays: PBA 7:45 a.m. until 8:15 a.m. student drop-off (up to 30 cars)  
PBA 3:20 p.m. until 3:45 student pick-up (up to 30 cars)  
PBA 9:45 a.m. until 3:20 p.m. for 15, 30 and 60 minute recesses for recreation

PBA 6:00 p.m. until 9:00 p.m. Open House/Special  
Event parking (4x year)  
M,T,W & Th PBA 3:45 p.m. 9:30 p.m. After School Choir (up to 150  
students  
PBA 3:30 p.m. until 6:30 p.m. After School Choir 45-  
minute recess  
Weekends: Church parking (informational only – not subject to  
CUP)

**North Lot: End of July/Beginning of August (two 5 day camps, 25  
students each)**

Weekdays: PBA 8:45 a.m. until 9:00 a.m. camp drop-off (up to 20  
cars)  
PBA 4:00 p.m. until 4:30 day camp pick-up (up to 20  
cars)  
PBA 10:00 a.m. until 11:00 a.m. one 15-minute recess  
and occasional 30-minute lunch  
Weekends: Church parking (informational only-not subject to  
CUP)

**424 Monte Vista: Year Round**

PBA Staff parking in 6 spaces reserved for the Academy in the south lot  
Church Staff parking in the remaining spaces (informational only – not  
subject to CUP)

Written notice was provided to neighbors. **Eight affirmative and two  
negative response forms** were received. **Correspondence** was received  
from: Angela Grubb, Feb. 4; Dea Bacchetti, President Oakland Heritage  
Alliance, Feb. 5; Olive Street Neighborhood Letter of Support, Jan. 3.

**Public testimony** was received from:

Pamela Weimer, Operations Manager of the Pacific Boychoir Academy  
(PBA) and Ted Moser, Academy Board Member, highlighted the  
accomplishments, goals and operation of the PBA, stressing in particular  
the exceptional music education it provides to its students, the global  
experiences and international distinctions that the PBA has achieved and  
the Academy's compatibility with the cultural and educational values and  
quality of life in Piedmont. The Academy is in the process of relocating  
from Berkeley to property it is purchasing from the Plymouth United  
Church of Christ at 412 Monte Vista Avenue in Oakland. Use of the  
adjacent parking lot, which is located in Piedmont, is critical to Academy  
operations – both as a student drop-off/staff parking lot and playground  
for students. The Academy intends to restore the 100-year old Victorian  
mansion at 412 Monte Vista and use this mansion as its school. They  
emphasized that the architectural restoration of the old mansion will  
increase neighborhood property values and is a better alternative than a  
previous potential buyer's proposal to develop the property into a multi-  
level, multi-unit condominium complex. They added that if the Plymouth  
Church property is ever put up for sale, the Academy has the first right of  
refusal to purchase this property as well.

Chris Lundin, Plymouth United Church of Christ Council Member, urged  
application approval, stressing that the Academy's restoration and use of  
412 Monte Vista Avenue benefits the neighborhood and will have less  
impact on neighboring residents than other potential uses of the property.

Ani Adhikari reviewed the PBA's search for a new location and stressed that its location at 412 Monte Vista and use of the parking lot will benefit Piedmont by offering residents an unique and local opportunity to provide global musical experiences for their children. She noted that while Academy students come from throughout the greater Bay Area, many students are Piedmont residents and it is hoped that this new location will attract even more Piedmont residents. She requested that the term of the CUP be 6 years to coincide with the term of the school's parking lot lease with the Church. She added however, the PBA's long-term intent to continue at the site.

Tom Armstrong, Angela Grubb and Trish Straus, all Piedmont residents, voiced their excitement and pleasure over the purchase of 412 Monte Vista by the PBA. Mr. Armstrong, a parent of an Academy student, described the benefits the PBA has provided his son and the opportunities that exist for a collaborative effort between the PBA and the PUSD and Recreation Department to expose children to the wonderful musical benefits PBA can offer. Mrs. Grubb concurred. Ms. Straus added that the Olive neighborhood is overjoyed at the prospect of the PBA locating at 412 Monte Vista and restoring, rather than demolishing, the property's historic mansion. She emphasized that the PBA is a perfect fit for the neighborhood and its presence will increase neighborhood property values. She added that previously a proposal to demolish the mansion and construct a 70-unit condo complex on the property was greatly opposed by the neighborhood.

Nicole Chapman, Project Architect Liaison, described the proposed renovation of the 1908 Victorian mansion, the fact that the City of Oakland's Heritage Alliance supports the PBA's proposal and that Piedmont resident and architect Kirk Peterson is involved in the renovation effort. She stated that the PBA anticipates opening on September 1.

The Commission agreed that the addition of the Academy benefits both the City and the surrounding neighborhood and its proposed use of the parking lot at 424 Monte Vista does not represent a material change in use from that currently existing.

**Resolution 6-CUP-09**

WHEREAS, Reverend Lois Mueller on behalf of the Plymouth United Church of Christ and Mr. Eric Nelson on behalf of the Pacific Boychoir Academy are requesting a Conditional Use Permit to allow the Pacific Boychoir Academy to use the parking lot located between 15 and 27 Olive Avenue to drop off and pick-up 35 to 50 students in the mornings and evenings; parking for staff and special events; parking and recreation for up to 150 evening choir students; and daytime recreation for students. This lot will also continue to be used by the Plymouth United Church of Christ at 424 Monte Vista 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 continues an existing use of the property for parking, while providing an additional benefit of cultural enrichment to Piedmont families.
2. The use will be properly related to other land uses and transportation and service facilities in the vicinity. The property is already a parking lot and is continuing this use in its existing condition.
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. There is no real change in the current use. The adjacent Academy will have no adverse health or safety impacts on the neighborhood.
4. The use will not be contrary to the standards established for the zone in which it is to be located. The site is already operating as a parking lot for this area.
5. The use will not contribute to a substantial increase in the amount of noise or traffic in the surrounding area. There will not be a significant change in the number of cars using the parking lot or hours of operation.
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 proposed use is consistent with the current permitted use.
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. Ingress/egress to the site is through the City of Oakland. There is no impact on Piedmont.
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 use is in full compliance with City zoning laws.

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 Plymouth United Church of Christ and Pacific Boychoir Academy for property located at 424 Monte Vista Avenue, Piedmont, subject to the following conditions:

*Requested CUP Term:* Six years, beginning on the date the Academy school opens;

*Requested CUP Provisions:*

**North Lot: September through Mid-June (up to 50 Student Enrollment, 8 Staff)**

Weekdays: PBA 7:45 a.m. until 8:15 a.m. student drop-off (up to 30 cars)  
PBA 3:20 p.m. until 3:45 student pick-up (up to 30 cars)  
PBA 9:45 a.m. until 3:20 p.m. for 15, 30 and 60 minute recesses for recreation  
PBA 6:00 p.m. until 9:00 p.m. Open House/Special Event parking (4x year)

M,T,W & Th PBA 3:45 p.m. 9:30 p.m. After School Choir (up to 150 students)  
PBA 3:30 p.m. until 6:30 p.m. After School Choir 45-minute recess

Weekends: Church parking (informational only – not subject to CUP)

**North Lot: End of July/Beginning of August (two 5 day camps, 25 students each)**

Weekdays: PBA 8:45 a.m. until 9:00 a.m. camp drop-off (up to 20 cars)  
PBA 4:00 p.m. until 4:30 day camp pick-up (up to 20 cars)  
PBA 10:00 a.m. until 11:00 a.m. one 15-minute recess and occasional 30-minute lunch

Weekends: Church parking (informational only-not subject to CUP)

**424 Monte Vista: Year Round**

PBA Staff parking in 6 spaces reserved for the Academy in the south lot  
Church Staff parking in the remaining spaces (informational only – not subject to CUP)

Moved by Robertson, Seconded by Kellogg

Ayes: Kellogg, Robertson, Stehr, Henn

Noes: None

Absent: Levine, Thiel

**Design Review & Fence  
Design Review  
74 Sandringham Road**

Mr. Horacio Woolcott is requesting design review and fence design review to stylistically alter and enlarge the existing 2,321 sq. ft., 2-story residence by adding approximately 1,930 sq. ft. of habitable space through excavation and additions. The resulting 3-story residence is proposed to have a new entry and foyer on the lower level, 4 bedrooms, 3 full baths, 2 half baths, a family room, den, laundry room, living room, dining room, kitchen, game room, elevator, conforming 2-car garage, and upper level front terrace. Proposed site improvements include: new landscaping and exterior lighting; a new excavated and enlarged driveway, new entry steps and posts, new retaining walls, new driveway gate, new pathway and fencing in the front yard; and new fencing along the side and rear property lines.

A similar application was conditionally approved by the Commission on December 8, 2008, in which new rear yard retaining walls and associated spa and water features were approved but proposals to enlarge the existing residence and make site improvements at the front of the property was denied with prejudice. In addition, a previous application to enlarge the existing residence was denied with prejudice by the Commission on February 13, 2006.



Written notice was provided to neighbors. **One affirmative, one negative response form** was received. **Correspondence** was received from: St. James Wood Homes Association, Feb. 5.

**Public testimony** was received from:

Humberto Olivos, Project Architect, described the design changes made in response to the December 8 meeting and responded to Commission questions concerning stone trim detail, driveway treatment, handrails, gas meter location and ridge height.

Horacio Woolcott voiced his disappointment that his previous design was not approved, noted that the current design is acceptable and requested that the Commission revise the City Code to better define and clarify what constitutes a significant neighbor view.

The Commission agreed that the redesign was responsive to Commission requests and minimizes impact on neighbor views. The Commission agreed that given the steeply sloped lot and the extensive scale and magnitude of the proposed remodel, a performance bond should be required as a condition of approval to guarantee project completion.

**Resolution 7-DR-09**

WHEREAS, Mr. Horacio Woolcott is requesting permission to stylistically alter and enlarge the existing 2,321 sq. ft., 2-story residence by adding approximately 1,930 sq. ft. of habitable space through excavation and additions. The resulting 3-story residence is proposed to have a new entry and foyer on the lower level, 4 bedrooms, 3 full baths, 2 half baths, a family room, den, laundry room, living room, dining room, kitchen, game room, elevator, conforming 2-car garage, and upper level front terrace. Proposed site improvements include: new landscaping and exterior lighting; a new excavated and enlarged driveway, new entry steps and posts, new retaining walls, new driveway gate, new pathway and fencing in the front yard; and new fencing along the side and rear property lines located at 74 Sandringham 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 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 proposed improvements comply with Design Review Guidelines II-1, II-2, II-3(a) through (d), II-4, IV-1, IV-2, IV-3, V-5 and V-5(a) through (c).
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, 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 comply with Design Review Guidelines II-5, II-6, II-7(a), IV-1, IV-2, IV-3 and IV-4. The height of the house is not being increased and it minimizes the effect on neighboring properties in terms of location and window placement.

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 complies with Design Review Guidelines II-1, II-2, II-5, II-6, IV-1, IV-2, IV-3 and IV-4.

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. Pedestrian and vehicle traffic safety is improved. The project complies with Design Review Guideline IV-6.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review application of Mr. Woolcott for construction at 74 Sandringham Road, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

1. The applicant shall apply for a building permit for the rear retaining walls and associated spa and water feature approved by the Planning Commission on December 8, 2008, that is separate from any building permit for approved construction on the remainder of the property. The current application proposes no changes to these previously approved features and any action taken by the Planning Commission on the current application in no way changes the December 8, 2008 decision approving the rear retaining walls or the conditions placed on that approval;

2. **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.

3. **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.

4. **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.

5. **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.

**6. 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.

**7. City Facilities Security.** The Applicant shall provide a specific cash deposit, letter of credit, bank guarantee, bond, or other similar financial vehicle ("City Facilities Security") in the amount of \$75,000.00, as established by the Director of Public Works, to cover the cost of any damage to City property or facilities in any way caused by Applicant, Applicant's contractors or subcontractors, or any of their agents, employees or assigns, or others working for or on behalf of Applicant on this Project, and related in any way to the Project. The form and terms of such City Facilities Security shall be determined by the Director of Public Works after consultation with the Applicant.

a) To provide clear baseline information to assist in determining whether damage to the City's facilities has been caused by the Applicant or others working for or on behalf of Applicant on this Project, 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 such streets and facilities, and 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 such documentation, the City may possibly hose or water down the streets to better emphasize any cracks or damage in the surface thereof. The Applicant shall be responsible for the full cost of all such documentation and related work, and shall reimburse the City therefore within 21 days after receiving written notification of the work performed and the amount to be reimbursed.

b) Proceeds from the City Facilities 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 compensate it for damages to City property or facilities, 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.

8. **Performance Security.** The Applicant shall provide a specific cash deposit, letter of credit, bank guarantee, performance bond, or other similar financial vehicle ("Performance Security") to ensure full compliance with these Conditions of Approval and the completion of the full construction of the Project, including all site improvements and landscaping, in accordance with the plans approved by the City.

a. The Performance Security shall be in an amount to include all expected costs to complete the Project, plus 25% to cover cost escalation, unexpected expenditures and other contingencies. If, as the Project proceeds, the expected cost to complete the Project increases beyond the original estimate in the opinion of the Director of Public Works, the City may require the Applicant to increase the amount of the Performance Security by such additional amount plus 25%, and Applicant 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 Applicant's sole expense, an independent estimator to determine the total expected costs to complete the Project and any subsequent revisions thereto.

b. The Director of Public Works shall approve the form and amount of the Performance Security, which shall absolutely ensure completion of the entire Project. Performance under the Performance Security shall commence upon demand by the City, 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 and owing to the City. The City shall not be required to prove or otherwise establish in any way that Applicant is in default of any condition, covenant or restriction, or any other prerequisite to the City's entitlement to performance by the provided security.

c. The Performance Security shall not be released until the entire Project has an approved Final Inspection by the Chief Building Official, provided that if, in the judgment of the Director of Public Works, sufficient work has been completed according to the benchmarks and construction values as established under the Construction Completion Schedule, such Performance Security may be reduced to the extent the Director of Public Works in his sole discretion shall determine is appropriate.

9. **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 \$2,500.00 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 \$100.00 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.

**10. 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 \$1,000.00 to be used to offset time and expenses of the City Attorney relating to the Project. If such cash deposit has been reduced to \$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.

**11. 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.

**12. 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.

**13. 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.

**14. 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.

**15. 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.

16. **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.

17. **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.

18. The approved plans are those submitted on January 20, 2009, with additional information submitted on January 21, 26, 28, 29 and 30, 2009, after neighbors were notified of the project and the plans were available for public review;

19. The applicants shall work with City staff to verify the location and depth of the sanitary sewer main and easement at the front of the property prior to the issuance of a building permit and any excavation and construction of the new driveway, entry steps and retaining walls;

20. Prior to the issuance of a building permit, the applicants shall apply and pay for an encroachment permit for the construction of any portion of new retaining walls or other new improvements located in the City's street right-of-way and/or any sewer easement at the front of the property;

21. The new driveway gate and new garage door shall be electronically operated;

22. The new exterior wall- and eave-mounted light fixtures shall be downward-directed with an opaque or translucent shade;

23. The driveway treatment color and texture shall be integrated with the materials of the house and shall not be cast-in-place concrete. Said treatment shall be subject to staff review and approval;

24. The location of the gas meter shall be reexamined so as not to be visually obtrusive. Said relocation 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 Kellogg

Ayes: Kellogg, Robertson, Stehr, Henn

Noes: None

Absent: Levine, Thiel

**New House  
Design Review  
53 Cambrian Avenue**

Mr. and Mrs. Ben O'Neil are requesting design review and fence design review to construct a new 4,347 sq. ft., 4 bedroom house with a dining room, kitchen, pantry, family room, TV room, playroom, study, 3 full baths, 2 half baths, laundry room, mud room, storage rooms, and a 2-car garage. Front and rear patios and a small upper level rear balcony are proposed. Site improvements include raising the grade near the house foundation and lowering the grade at the rear, new retaining walls, walkways, a rear spa, exterior lighting, and new landscaping (including new trees and the removal of some existing trees). Two alternate roof designs are proposed: a flat option with skylights and a pitched option. A previous application was denied, without prejudice, by the Commission on November 10, 2008.

Written notice was provided to neighbors. **Four affirmative, five negative response forms** were received. **Correspondence** was received from: St. James Wood Homes Association, Feb. 5; Bryon & Caryl James, Feb. 5; Jerome & Susan Herrick, Feb. 3

**Public testimony** was received from:

Ben O'Neil described the design changes made in response to the November meeting, noting his preference for the flat roof design option and his intent to submit a rear fencing plan once a mutually acceptable design has been reached with his neighbors.

Robert Pennell, Project Architect, highlighted the efforts reflected in the current design to mitigate neighbor privacy impacts and reduce massing. He too felt that the flat roof option was the best design for the proposed home.

Bryon & Caryl James agreed that the redesign was an improvement over previous applications and noted their preference for the pitched roof option. They also requested that the proposed rear landscaping buffer not be planted any closer than 4 to 6 ft. from their brick retaining wall so that tree roots will not threaten the future stability of this wall.



Jerry & Susan Herrick supported approval of the current application, requesting that an additional (3<sup>rd</sup>) tree be planted in the southwest corner of the property to maximize privacy protection, that the pitched roof option be approved and that a lot line adjustment be required to eliminate a 33 inch wide slot of land between the driveways of the two properties that is not incorporated into the applicant's development plan. They noted their intent to work with the applicant in terms of rear yard landscaping and fencing.

Jan Kessler supported project approval, stating her preference for the flat roof option.

The Commission agreed that the redesign was responsive to Commission requests. The Commission acknowledged that both roof options were acceptable under the City's Design Review Guidelines. However, the Commission agreed with the applicant that the flat roof option was preferable, noting its well-crafted nature was more architecturally consistent with the contemporary design of the home and that the flat style added an appropriate horizontal proportion to the house. The Commission further agreed that the issue of a lot line adjustment between the two properties was a private matter between the applicant and his neighbor.

**Resolution 8-DR-09**

WHEREAS, Mr. and Mrs. Ben O'Neil are requesting permission to construct a new 4,347 sq. ft., 4 bedroom house with a dining room, kitchen, pantry, family room, TV room, playroom, study, 3 full baths, 2 half baths, laundry room, mud room, storage rooms, and a 2-car garage. Front and rear patios and a small upper level rear balcony are proposed. Site improvements include raising the grade near the house foundation and lowering the grade at the rear, new retaining walls, walkways, a rear spa, exterior lighting, and new landscaping (including new trees and the removal of some existing trees) located at 53 Cambrian 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, with the flat roof design option, 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 new multi-level structure and adjacent residences is reasonable and appropriate due to the existing topography and neighborhood development pattern. The proposed construction complies with Design Review Guidelines I-1, I-2(a), (c) & (d), I-2, I-5, I-6, IV-1, IV-2 and IV-3.

2. The proposed new multi-level structure/expansion has been designed in a way that reasonably minimizes view and light impacts on neighboring properties (as defined in Section 17.2.70). The new home is properly sited so that the angle of exposure to adjoining neighbors at the rear is minimal and enhanced by overhangs and the careful selection of doors and fenestrations facing on these openings. There is no impact on side neighbors' view, light or privacy. The project complies with Design Review Guidelines I-2(d), I-7, I-8 and I-9.

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 construction is well within the limits of structure coverage, impervious surface coverage and floor area ratio allowed by code. The size of the new home is well in keeping with the neighborhood as well as what is appropriate for the size of the lot. The project complies with Design Review Guidelines I-1, I-2, I-5, I-5(a) & (b) and I-6.

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/or is not 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. The driveway placement allows the curb cut to be a reasonable distance from the intersection and to protect existing landscaping wherever possible. Adequate vehicle and pedestrian sight lines are achieved. The project complies with Design Review Guidelines III-7, I-11 and I-12; and

WHEREAS, the Planning Commission further finds with regard to the two proposed roof options that:

*Flat Roof Option:* is the applicant's preference and it complies with the City's Design Review Guidelines. The flat roof's applied horizontal bands mitigate building bulk, the roof is consistent with the general style of the home's single-paned punched windows and embraces and enhances the modern, contemporary architectural character of the new home.

*Pitched Roof Option:* is not an unacceptable option. While this option complies with the City's Design Review Guidelines, it is a less true architectural statement to the contemporary style of the proposed home, creates a less refined and distinctive character for the home and is more average in overall quality.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review application, with the flat roof option, of Mr. and Mrs. O'Neil for construction at 53 Cambrian 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 militate 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. **City Facilities Security.** The Applicant shall provide a specific cash deposit, letter of credit, bank guarantee, bond, or other similar financial vehicle ("City Facilities Security") in the amount of \$200,000, as established by the Director of Public Works, to cover the cost of any damage to City property or facilities in any way caused by Applicant, Applicant's contractors or subcontractors, or any of their agents, employees or assigns, or others working for or on behalf of Applicant on this Project, and related in any way to the Project. The form and terms of such City Facilities Security shall be determined by the Director of Public Works after consultation with the Applicant.

a. To provide clear baseline information to assist in determining whether damage to the City's facilities has been caused by the Applicant or others working for or on behalf of Applicant on this Project, 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 such streets and facilities, and 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 such documentation, the City may possibly hose or water down the streets to better emphasize any cracks or damage in the surface thereof. The Applicant shall be responsible for the full cost of all such documentation and related work, and shall reimburse the City

therefore within 21 days after receiving written notification of the work performed and the amount to be reimbursed.

b. Proceeds from the City Facilities 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 compensate it for damages to City property or facilities, 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.

7. **Performance Security.** The Applicant shall provide a specific cash deposit, letter of credit, bank guarantee, performance bond, or other similar financial vehicle ("Performance Security") to ensure full compliance with these Conditions of Approval and the completion of the full construction of the Project, including all site improvements and landscaping, in accordance with the plans approved by the City.

a. The Performance Security shall be in an amount to include all expected costs to complete the Project, plus 25% to cover cost escalation, unexpected expenditures and other contingencies. If, as the Project proceeds, the expected cost to complete the Project increases beyond the original estimate in the opinion of the Director of Public Works, the City may require the Applicant to increase the amount of the Performance Security by such additional amount plus 25%, and Applicant 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 Applicant's sole expense, an independent estimator to determine the total expected costs to complete the Project and any subsequent revisions thereto.

b. The Director of Public Works shall approve the form and amount of the Performance Security, which shall absolutely ensure completion of the entire Project. Performance under the Performance Security shall commence upon demand by the City, 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 and owing to the City. The City shall not be required to prove or otherwise establish in any way that Applicant is in default of any condition, covenant or restriction, or any other prerequisite to the City's entitlement to performance by the provided security.

c. The Performance Security shall not be released until the entire Project has an approved Final Inspection by the Chief Building Official, provided that if, in the judgment of the Director of Public Works, sufficient work has been completed according to the benchmarks and construction values as established under the Construction Completion Schedule, such Performance Security may be reduced to the extent the Director of Public Works in his sole discretion shall determine is appropriate.

8. **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 \$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 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.

9. **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 \$15,000 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.

10. **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.

11. **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 per occurrence.

12. **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.

13. **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.

14. **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.

15. **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.

16. **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.

17. **Certified Tree Preservation Plan.** Prior to the issuance of a building permit, the Applicant shall prepare for review and approval by staff a Tree Preservation Plan that incorporates the tree preservation measures recommended in an Arborist's Report (the applicant may use the report and addendum prepared by Pete Churgel, date-stamped February 6, 2009. The Tree Preservation Plan shall also include the Oak trees in "Landscape Zone 8" as well as the City street tree, shown on the plans to be retained to ensure their preservation. The tree preservation measures shall be on the appropriate sheets of the construction plans. The arborist shall be on-site during critical construction activities; initial and final grading to ensure the protection of the existing trees. The arborist shall document in writing and with photographs the tree protection measures 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. At the conclusion of the project, prior to Final Inspection, the Arborist shall file a report to the City of Piedmont 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.

18. **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.

19. **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. The Applicant shall provide a specific cash deposit, bond, letter of credit, bank guarantee or other similar financial vehicle ("Subsidence Security") in the amount of \$300,000 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 on 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.

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 released until the entire Project has been completed and has an approved Final Inspection by the Chief Building Official.

20. **Neighboring Property Inspection.** A structural engineer chosen by the Applicant, shall inspect neighboring homes at 6 and 8 Croydon Circle 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 the 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 Applicants property the same structural engineer chosen by the City or a substitute structural engineer chosen by the City shall inspect the same exact 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 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 the Neighboring Property Damage Security hereafter.

21. **Neighboring Property Damage Security.** The Applicant shall obtain and maintain insurance or provide a bond letter of credit, bank guarantee or other similar financial vehicle ("Neighboring Property Damage Security"), as approved by the Director of Public Works to insure against or otherwise provide funds to repair any damage (including, without limitation, subsidence and erosion) to neighboring properties at 6 and 8 Croydon Circle caused by any construction, excavation, and related work in any way related to the Project not immediately and fully rectified by the Applicant to the satisfaction of the Director of Public Works, .

a. Such Neighboring Property Damage Security shall specifically indicate that it covers damages to the above properties, shall be in the amount of no less than \$1,000,000 and shall incorporate any other conditions established by the Director of Public Works after consultation with the Applicant. No portion of this amount may be satisfied by other insurance or security required under these Conditions of Approval.

b. 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 appropriate alternative method of providing equal protection to neighboring properties, such as partial coverage by Umbrella Insurance.

c. The Neighboring Property Damage Security shall allow for claims to be made for up to two years after the issuance of the Certificate of Occupancy on the Project.

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. **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.

24. **Approved Plan Date.** The plans approved are those submitted on January 29, 2009, with updated information dated February 6, 2009, after notices were mailed and the plans were available for public review.

25. **Landscaping.** The landscaping design, including plant material and placement in the rear yard bordering 6 and 8 Croydon Circle be selected and placed in a position that is mutually agreed to by the applicant and the property owners of 6 and 8 Croydon Circle. This landscaping needs to be sensitive to the stability of existing retaining walls and fences and reasonable in density and quantity to serve as an adequate buffer between the properties. The proposed planting, which includes two primary large trees facing 8 Croydon Circle, should be sufficient to provide adequate separation from the rear outdoor living space at 8 Croydon Circle. The intent of a hedge-type structure along the corner property should be sufficient to provide adequate buffer along the remaining zone of 8 Croydon and 6 Croydon Circle. Fencing along the property lines are not part of this application and are subject to adjustment and rebuilding as mutually approved by the applicant and his neighbors.

26. **Excavation.** Any excavation work along the property boundaries, particularly related to 6 Croydon Circle, be done in a way to not create any adverse effects or damage to existing retaining walls or fences along the property line. Such excavation work shall be in accordance with the requirements provided by the applicant's geotechnical report and the peer review geotech report that is provided by a consulting engineer approved by the City Engineer.

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 Kellogg, Seconded by Robertson

Ayes: Kellogg, Robertson, Stehr, Henn

Noes: None

Absent: Levine, Thiel

## ADJOURNMENT

There being no further business, Chairman Stehr adjourned the meeting at 10:30 p.m.