

PIEDMONT PLANNING COMMISSION

Regular Meeting Minutes for Monday, August 8, 2011

A Regular Session of the Piedmont Planning Commission was held August 8, 2011, in the City Hall Council Chambers at 120 Vista Avenue. In accordance with Government Code Section 54954.2(a) the agenda for this meeting was posted for public inspection on July 29, 2011.

CALL TO ORDER

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

ROLL CALL

Present: Commissioners Phillip Chase, Michael Henn, Jim Kellogg, Melanie Robertson, Clark Thiel and Alternate Commissioner Tom Zhang

Staff: City Planner Kate Black, City Attorney Tom Curry, Assistant Planner Kevin Jackson, Planning Technician Manira Sandhir and Recording Secretary Chris Harbert

CONSENT CALENDAR

There was no consent calendar.

PUBLIC FORUM

There were no speakers for the public forum.

APPROVAL OF MINUTES

Ms. Carolyn Collins requested that the Commission amend Resolution 182-DR-11 of its July 13 meeting minutes to include in Condition #9 that the landscape plan to be submitted by the property owners of 330 Sheridan "also provide dense screening for her property at 124 Caperton." She stated that the applicant's approved construction at 330 Sheridan will have a significant impact on her viewscape.

The Commission and City Planner responded that Condition #9 as set forth in the July 13 minutes was accurate as written, Ms. Collins failed to appeal the Commission's July 13th action within the specified time period, Resolution 182-DR-11 cannot be revised without prior notice of this consideration given to the applicants of 330 Sheridan and the motion was made with the understanding that the Ms. Collins had recently removed large trees from her own property which had screened 330 Sheridan from her view. It was noted that there is ample room on Ms. Collins' own property to replant tree/vegetation screening. In addition, the landscape plan of 330 Sheridan, as conditioned, will provide dense screening on the north corner of the property to screen 120 Caperton which in turn should also provide screening to 124. The Commission encouraged Ms. Collins to discuss with the owners of 330 Sheridan her screening issues during the preparation of the proposed landscaping plan. In addition, staff was instructed to advise Ms. Collins when the landscape plan is submitted for staff review and approval so that Ms. Collins can review the plan and voice any comments or concerns.

Resolution 11-PL-11

RESOLVED, that the Planning Commission approves as submitted its meeting minutes of July 13, 2011.

Moved by Kellogg, Seconded by Robertson

Ayes: Chase, Kellogg, Robertson, Thiel

Noes: None

Abstain: Henn

Absent: None

REGULAR CALENDAR

The Commission considered the following items of regular business:

**Design Review, Fence
Design Review, Variance
Vesting Tentative Map
and CEQA
408 Linda Avenue**

Piedmont Station LLC (PSLLC) is requesting design review, fence design review and variance to demolish the existing 5,700 sq. ft. two-story, concrete electrical utility substation (Substation E) that was constructed in 1926 and vacated by PG&E in 1991. Seven 3-story over basement townhouses are proposed to be constructed, each with 4 bedrooms, 3+ baths, and ranging in size from approximately 2,178 to 2,408 sq. ft. Each townhouse is proposed to have two garage parking spaces, with one on-site guest parking space for the development. All of the units are proposed to be market rate condominium units. Retaining walls and fences are proposed along the Linda Avenue frontage. A variance to construct within the 20 ft. setback from the right-of-way adjacent to the Oakland Avenue bridge may be required. An application for a Vesting Tentative Map to create condominium ownership of the townhouse units has also been submitted. The application is subject to an Environmental Impact Report pursuant to the California Environmental Quality Act.

This application was previously considered by the Commission on June 13, 2010. The Chairman announced that the purpose of tonight's hearing is to take further testimony on the project and allow the Commission an opportunity to either determine if the matter should be continued to a future meeting or take action on the project by making a formal recommendation to the City Council.

Written notice was provided to neighbors. **Correspondence** was received from: Glen Jarvis; Rick Schiller; Garrett Keating; Bace Financial Group; Branagh Development; Matt Heafey of Grubb Company Realtors

Public testimony was received from:

Patrick Zimski, a principal of PSLLC, summarized the extensive design preparation and review process for the proposed development, stressed that the project complies with the City's Design Review Guidelines and Zoning Code and referenced the additional information provided and minor design changes made in response to the June meeting. He stated that staff's proposed *conditions of approval* are acceptable and that the estimated cost of the project construction is \$3.8 Million.

Glen Jarvis, Project Architect, briefly described the minor design changes in the units' design and floorplans and responded to Commission questions related to landscaping, tree preservation and removal, exterior materials (samples of paving and roofing material were provided), building color scheme, property survey results (submitted plans are in conformance with the survey) and explained that while no air conditioning systems are proposed for the units because of a belief that they are unnecessary, several options exist at the working drawing/construction stage to accommodate the future potential for air conditioning installation.

Debbie Hall, owner of the adjacent property at 420 Linda, inquired regarding proposed grading changes, retaining wall location and height,

drainage issues and how the results of the new survey affect her property. Her questions were answered by Mr. Jarvis.

Rick Schiller reiterated his June 13 concerns regarding the inadequacy of the project's traffic/parking studies and his belief that the project's parking needs projection for the development was inaccurate and unrealistic. He also felt that air conditioning should be included as part of the development's heating system.

Garrett Keating referenced his e-mail concerning parking and voiced concern that the project's parking studies were flawed and that the project's proposed on-site parking was inadequate. He also encouraged the Commission to consider future parking needs in this area and the requirements which should be placed on developers given the potential that more multi-family developments may take place in the neighborhood.

Mark Spencer of Whitlock & Winberger Transportation (W-trans), the project's parking consultant, explained in detail the process and findings of the supplemental parking study conducted in response to the June meeting, noting that 7 additional parking studies were performed covering periods of evenings and days both on week days and weekends as well as during overlapping events occurring at Linda Playfield and Kehilla Synagogue. In the end, every survey indicated that there was available on-street parking to accommodate even the worst-case scenarios of parking demand. The Commission engaged in a lengthy discussion of parking needs, issues and accommodations with Mr. Spencer. In the end, it was Mr. Spencer's professional opinion that the project's proposal for 2 parking spaces per unit was appropriate, adding that while the development's close proximity to an express transbay bus line and casual carpool site is a bonus in terms of reducing potential parking demand, it is not a significant factor in determining the adequacy of the project's parking needs.

The Commission discussed the project at length, agreeing that the quality of architectural design and proposed construction complies with the City's Design Review Guidelines and Zoning Code and the traffic analysis provided is thorough and complete -- the finding of two spaces per unit is appropriate, reasonable and realistic. The Commission further agreed that issues related to construction hours, routes, protection of school children safety, etc. would be adequately addressed by the project's construction management plan. It was acknowledged that the most recent survey determined that the retaining wall between 408 and 420 Linda Avenue was actually on the 408 Linda Avenue property, and was proposed to be rebuilt with a drainage channel in it to address run-off between the two properties. During the Commission's review, the use and size of the green landscaped areas in front of the Linda Avenue facing units was discussed at length, with general agreement that the area was attractively designed as proposed, but was not an appropriate area for privacy fencing, antennas, barbeques, patios, play-structures or air conditioning condensers. In answer to a Commission question, Mr. Zimski stated that the PSLLC proposed to pay to underground the utilities, and that it would involve 6 units across the street through the process dictated by PG&E. The need/facilitation of air conditioning, concerns over the amount of required liability insurance, preservation of the site's three large acacia trees and garage

use/parking were discussed. In the end, the Commission agreed that the project's conditions of approval were sufficient to mitigate said concerns with a few modifications, and no changes to the proposed design and submitted drawings were requested.

Resolution 99-DR-08/62-VTM-11

WHEREAS, Piedmont Station LLC (PSLLC) is requesting design review, fence design review and variance to demolish the existing 5,700 sq. ft. two-story, concrete electrical utility substation (Substation E) that was constructed in 1926 and vacated by PG&E in 1991. Seven 3-story over basement townhouses are proposed to be constructed, each with 4 bedrooms, 3+ baths, and ranging in size from approximately 2,178 to 2,408 sq. ft. Each townhouse is proposed to have two garage parking spaces, with one on-site guest parking space for the development. All of the units are proposed to be market rate condominium units. Retaining walls and fences are proposed along the Linda Avenue frontage; and

WHEREAS, a variance to construct within the 20 ft. setback from the right-of-way adjacent to the Oakland Avenue bridge may be required; and

WHEREAS, an application for a Vesting Tentative Map to create condominium ownership of the townhouse units has also been submitted; and

WHEREAS, the application is subject to an Environmental Impact Report pursuant to the California Environmental Quality Act.

RESOLVED, that the Piedmont Planning Commission makes the following findings regarding these matters:

- **With regard to the California Environmental Quality Act:**
In accordance with the California Environmental Quality Act and the State CEQA Guidelines under which the City is the Lead Agency for the project, the Planning Commission recommends that the City Council determine the following:

A. The City has independently reviewed and considered the Final Environmental Impact Report (FEIR) and has evaluated and considered all comments, written and oral, received from persons who have reviewed the Draft Environmental Impact Report (DEIR) and the FEIR;

B. The FEIR for the Project has been completed and is in compliance with the provisions of the California Environmental Quality Act, Public Resources Code section 21000, et seq. ("CEQA"), with the CEQA Guidelines and local guidelines for implementing CEQA, and all other applicable laws and regulations;

C. Based upon its review of the FEIR, the City finds that the FEIR for the Project is an adequate assessment of the potentially significant environmental impacts of the Project, as described in the FEIR, and sets forth a reasonable range of alternatives to the Project;

D. The City certifies the FEIR as complete and adequate under CEQA, and certifies that the FEIR represents the independent judgment and analysis of the City;

E. The mitigation measures identified in the Draft and Final EIR and as fully defined in the Draft Findings of Fact and Statement of Overriding Considerations attached as Exhibit III to this Memorandum, when implemented, avoid or substantially lessen all but one of the significant effects identified in the Draft and Final EIRs;

F. The findings and mitigation measures identified in the Draft Findings of Fact and Statement of Overriding Considerations attached as Exhibit III to this Memorandum, are adequate and incorporated herein;

G. The Mitigation Monitoring and Reporting Program, attached to this report as Attachment IV, is approved and incorporated herein.

H. The project would have a significant and unavoidable impact to the existing PG&E substation building, a historic resource. This significant and unavoidable impact is identified and discussed in Chapter 3.0 of the Draft Findings of Fact and Statement of Overriding Considerations attached as Exhibit III to this Memorandum. The City further specifically finds that notwithstanding the disclosure of this significant and unavoidable impact, there are specific overriding economic, legal, social, and other reasons for approving the project. These reasons are as follows:

- i. The project will contribute to the City's housing stock in order to address regional housing needs;
- ii. The project site is the only available location in the City to develop new multi-family housing;
- iii. The project will develop the site in a way that is consistent with the City's General Plan and the land use designation for the site;
- iv. The project will add to the City's tax base, allowing for the provision of public services.

Therefore, each of the specific economic, legal, social, and/or other reasons identified above independently outweighs the significant adverse impact to a historic resource and is an overriding consideration independently warranting approval. On balance, the City finds that there are specific considerations associated with the project that serve to outweigh the project's significant and unavoidable cultural resources impact. Therefore, pursuant to CEQA Guidelines Section 15093(b), the adverse effect is considered acceptable.

- **With regard to Design Review, Fence Design Review and Variance (Application #08-0099):** In accordance with Chapter 17 of the Piedmont Municipal Code, the Planning Commission finds that:

A. As conditionally approved, the Project is in compliance with the principles of the Intent of Design Review in Section 17.20.1 of the Code in that the project will promote an orderly, attractive, safe and

harmonious development; environmental factors have been considered; the general welfare of the City has been promoted because the project meets the specific clauses and performance standards of the Chapter, and is properly related to the sites, surroundings, traffic circulation, and environmental setting; the residential character of the City will be maintained and enhanced; the natural beauty and visual character is protected because the project has been designed with due regard to the aesthetic qualities of the surrounding area, natural terrain, landscaping and other area improvements; the property values of the City will be improved; and the aesthetic values of the community will be upheld;

B. As conditionally approved, the Project is in compliance with Section 17.20.9 (b) of the Code related to new multi-level structures in that:

- i. 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 or new multi-level structure 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;
- ii. The proposed project has been designed in a way that reasonably minimizes view and light impacts on neighboring properties (as defined in Section 17.2.77), including consideration of the location of the new construction, lowering the height of the structures, 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;
- iii. The size and height of the project 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; and
- iv. 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 17.16.2, the existing or proposed on-site parking is appropriate to the size of the new upper level or new multi-level structure, and additional parking is not required to prevent unreasonable short and/or long term parking impacts on the neighborhood;

C. As conditionally approved, the Project is in compliance with the following Residential Design Guidelines

- i. New Construction: I-1, I-1(a), I-1(b), I-1(c), I-1(d), I-2, II-2(a), I-2(b), I-2(c), I-2(d), I-3, I-4, I-5, I-5(a), I-5(b), I-6, I-7, I-7(a), I-8, I-9, I-9(a), I-10, I-11, I-12;
- ii. Garages: III-1, III-1(a), III-2, III-2(a), III-3, III-4, III-5, III-5(a), III-6, III-6(a), III-7, III-7(a);
- iii. Retaining Walls: IV-1, IV-1(a), IV-1(b), IV-2, IV-2(a), IV-3, IV-3(a), IV-4, IV-4(a), IV-5, IV-5(a), IV-6;
- iv. Fences: V-1, V-2, V-3, V-4, V-5, V-5(a), V-5(b), V-5(c), V-6, V-7, V-8, V-9, V-10, V-11;

D. The Project does not require variance from Section 17.12.6 of the Code which requires a 20 ft. side yard setback from a street corner lot because this lot is not a Corner Lot as defined in the Code since Oakland and Linda Avenues do not physically intersect. In addition, the City's public right-of-way property separating this property line from Oakland Avenue provides sufficient space between the project property and Oakland Avenue.

THEREFORE BE IT RESOLVED, that based upon the findings and facts set forth heretofore, the Planning Commission recommends City Council approval of Application #08-0099 subject to the following conditions of approval:

DR-1. CEQA Mitigation Measures. The Mitigation Monitoring and Reporting Program (MMRP) related to the Final Environmental Impact Report prepared pursuant to the California Environmental Quality Act for this project (State Clearinghouse #2010032085), are incorporated herein by reference. Compliance with the MMRP is required.

DR-2. Construction Management Plan. The Property Owner shall develop a comprehensive Construction Management Plan. The Construction Management Plan shall address noise, vibrations, traffic control, parking, debris removal, dust control, sanitary facilities, and other potential construction impacts, as well as other details involving the means and methods of completing the Project, including the construction route. The City Building Official has the authority to require modifications and amendments to the Construction Management Plan as deemed necessary throughout the course of the Project and until the Final Inspection.

a. Stormwater BMPs for Construction. Property Owner shall implement (1) stormwater treatment Best Management Practices (BMPs) and (2) 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 Property Owner's Construction Management Plan.

b. Engineer Consultant. The City will, at the Property Owner's sole cost, engage the services of an Engineer to review the results of the geotechnical report, prepare a sound and vibration mitigation

plan, and monitor the vibration and decibel levels at the Project (including being periodically present at the construction site during excavation and foundation work). If, in the Engineer's sole discretion, such monitoring indicates that the sound or vibration levels exceed those anticipated in the Property Owner's Construction Management Plan, all work on the Project may be immediately stopped by the City and may not resume until the City Engineer is fully assured that the sound and vibration transmissions generated by work on the Project can be maintained at or below a reasonable level and duration.

c. Beach Elementary School and Playfield. The Construction Management Plan (CMP) shall specifically address issues related to the proximity of the project to the Beach Elementary School and playfield. The CMP shall be developed in consultation with the Piedmont Unified School District and the Piedmont Recreation Department, and shall be subject to approval by the Public Works Director. The CMP shall be developed to avoid conflicts with large vehicles removing or delivering materials to the Project site during the student drop-off and pick-up hours. The Project site shall be appropriately fenced and have signage to prevent children from using the property as a cut-through from Oakland Avenue to Linda Avenue.

DR-3. Construction Completion Schedule. Work on the Project, once begun, shall be promptly executed with continuous good faith and reasonable progress. Since timely completion of this Project is of the essence, the Property Owner shall submit for approval a Construction Completion Schedule, which will specify, in detail, the duration and percentage complete of each phase.

- a. The Construction Completion Schedule with associated construction values for each benchmark shall set forth completion dates for the following benchmarks:
 - i. Completion of Demolition
 - ii. Completion of Excavation;
 - iii. Completion of Retaining Walls;
 - iv. Completion of Foundation;
 - v. Completion of Rough Framing;
 - vi. Completion of Electrical;
 - vii. Completion of Plumbing;
 - viii. Completion of Mechanical;
 - ix. Completion of Fire Sprinklers;
 - x. Completion of Home;
 - xi. Completion of Hardscaping and Landscaping; and
 - xii. any further construction benchmarks and conditions of occupancy as may be determined by the Director of Public Works.
- b. Before the Project begins, the Director of Public Works shall make a determination as to the reasonableness of the proposed completion dates applicable to the Project, and that determination shall constitute the "Approved Schedule" and be binding on the Property Owner. The City may, at the Property Owner's sole cost, engage the services of a consultant to review the Property Owner's proposed Construction Completion Schedule and, to the extent the

period allocated for any work appears unjustifiable, recommend to the Director of Public Works a reasonable completion date for any benchmark.

- c. If the work for any specific benchmark has not been completed within 90 days after the completion date set forth in the Approved Schedule, and the delay in completion has not been caused by force majeure, the Director of Public Works has the option at any time thereafter to make a claim against the Property Owner's Site Security, if one is required, in order to complete the benchmark. The Director of Public Works has the option to refer the application to the Planning Commission for public review.

DR-4. **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.

DR-5. **Contractor's General Liability Insurance.** To ensure that the contractor doing work in the City will be responsible for damages caused by the work to City property or to neighboring property, the Property Owner shall require all contractors 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 \$5,000,000 per occurrence. The insurance shall include builder's risk. The insurance shall include an endorsement requiring 30 days' notice to the City if the insurance is cancelled or changed, and Property Owner shall immediately arrange for substitute insurance coverage.

As an alternative to requiring each subcontractor to obtain General Liability Insurance, the Property Owner may require the General Contractor to obtain an endorsement to cover his or her subcontractors.

If the Property Owner does not have a general contractor, the Property Owner shall maintain property insurance, including builder's risk and coverage for subcontractors, which is substantially equivalent to the contractor's requirement of this section.

DR-6. **Defense of legal challenges.** If there is a third party administrative, legal or equitable action challenging the project approvals, including CEQA issues, the Property Owner shall defend and indemnify the City against any liability, fees and costs arising out of the defense, including the costs of City's own counsel. If such an action is filed, the Property Owner and City shall then enter into an agreement regarding selection of counsel and other provisions related to the defense. For this purpose, "City" includes the City and its elected and appointed officials, agents, officers and employees.

DR-7. **Modifications to Conditions.** Any insurance or security requirement, or related Condition of Approval, may be implemented and, if necessary modified, in a reasonable manner with the joint agreement of the Director of Public Works and the City Attorney, consistent with the intent of the condition.

DR-8. **Approved Plan Set.** The approved plans are those submitted on July 14, 2011 and July 21, 2011, with supplemental materials submitted on August 2, 4 and 5, 2011, after notices to neighbors were mailed and the application was available for public review.

DR-9. **Geotechnical Report and Review.** The Property Owner shall submit a report prepared by a geotechnical engineer of the Property Owner's choice that fully assesses the existing site conditions, and addresses all issues regarding excavation and grading, foundations and their construction, drainage, retaining wall systems, periodic on-site observations, and other related items involving the Project.

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

DR-10. **Foundation/Shoring/Excavation Plan.** The Property Owner shall submit foundation, excavation, and shoring plans prepared by a structural engineer that fully address issues of site shoring, fencing and hillside security issues. The plans shall not require any trespassing or intruding into neighboring properties (without prior written consent), and shall mitigate against any subsidence or other damage to neighboring properties. Such plans shall incorporate as appropriate the recommendations of the Property Owner's geotechnical engineer and the City's geotechnical consultant, and shall be subject to approval by the City Engineer and the Chief Building Official.

DR-11. **Site Safety Security.** The City and the public have an interest in not having an unfinished project blighting the neighborhood and undermining property values. These public interests are primarily safety and aesthetics, and diminishment of property values. Prior to the issuance of a Building Permit, the Property Owner shall provide a specific cash deposit, letter of credit, bank guarantee, or other similar financial vehicle ("Site Safety Security") in the amount of \$250,000 to ensure that the Project site is not left in a dangerous or unfinished state.

- a. The Site Safety Security shall be in an amount to include three components:
 - (1) safety, which means the cost to make the site and structure safe if construction should cease mid-way through the Project;
 - (2) aesthetics, which means an amount to install and maintain landscaping all around the Project to protect the immediate local views from neighbors and public property; and
 - (3) staff and consultant time to evaluate and implement this condition.

If, as the Project proceeds, the expected cost of these components increases beyond the original estimate in the opinion of the Director of Public Works, the City may require the Property Owner to increase the amount of the Site Safety Security by the additional amount. The Property Owner shall provide City with written evidence of compliance within 15 working days after receiving written notice of the additional required amount. The City shall retain, at the Property Owner's expense, an independent estimator to verify the total expected costs to complete the Project and any subsequent revisions.

b. The form and amount of the Site Safety Security is subject to the approval of the Director of Public Works. Payment to City under the Site Safety Security shall be made payable upon demand by the City and prior to the issuance of the Building Permit, conditioned solely on the Director of Public Works' certification on information and belief that all or any specified part of such Performance Security is due to the City.

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

DR-12. Consultant Cost Recovery. In order to accommodate the scope and nature of the Project proposed by the Property Owner, if the Director of Public Works deems it necessary to retain independent consultants with specialized expertise, the Property Owner shall make a cash deposit with the City at the time of the Building Permit Application in the amount of \$5,000 to be used to pay for the fees and expenses of such City consultants, or in any way otherwise required to be expended by the City for professional assistance (other than City Staff). If the cash deposit has been reduced to \$2,500. or less at any time, the Director of Public Works may require the Property Owner to deposit additional funds to cover any further estimated fees and expenses associated with consultants retained by the City for the Property Owner's Project. Any unexpended amounts shall be refunded to the Property Owner within 90 days after the Project has an approved Final Inspection by the Chief Building Official.

DR-13. City Attorney/City Engineer Cost Recovery. If there is a substantial additional commitment of City Attorney's and/or City Engineer's time required to accommodate the scope and nature of the Project, the Property Owner shall, at the time of the Building Permit Application, make a cash deposit with the City in the amount of \$5,000 to be used to offset time and expenses of the City Attorney and/or City Attorney relating to the Project. If such cash deposit has been reduced to \$2,500.00 or less at any time, the Director of Public Works may require the Property Owner to deposit additional funds to cover any further estimated additional City Attorney and/or City Engineer time and expenses. Any unused amounts shall be refunded to the Property Owner within 90 days after the Project has an approved Final Inspection by the Chief Building Official.

DR-14. Certified Tree Preservation Plan. If the applicant proposes to save any trees on the site or on the City right-of-way between the site and the Oakland Avenue bridge, the Property Owner shall prepare for review and approval by staff a modified Tree Preservation Plan that incorporates the tree preservation measures recommended by the Arborist's Report, prepared by Davey Tree Expert, dated November 3, 2011, and submit the report prior to the issuance of a building permit. The tree preservation measures shall include fencing to the dripline of all trees to be preserved on-site and within the City Right-of-Way, and shall be on the appropriate sheets of the construction plans. The arborist shall be on-site during critical construction activities, including initial and final grading, to ensure the protection of the existing trees. 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.

Before the Final Inspection, the Arborist shall file a report to the City certifying that all tree preservation measures as recommended have been implemented to his/her satisfaction and that all retained trees have not been compromised by the construction.

DR-15. Final Landscape Plan. Before issuance of a building permit, the Property Owner shall submit for staff review and approval a Final Landscape Plan that shows trees proposed for retention as specified under a Certified Tree Preservation Plan. The Final Landscape Plan shall also show trees proposed for removal on site and in the City right-of-way, and shall show two in-lieu replacement trees planted elsewhere on the property and right-of-way for each tree removed. Replacement tree size is subject to staff review, and shall be commensurate with the size and numbers of trees to be removed. They shall generally be a minimum of 24" box size. The final landscape plan shall comply with Municipal Code Section 17.17.3, and shall not propose plants near the driveway that could obscure visibility of pedestrians on the sidewalk or vehicles on the street from drivers exiting the driveway. The Final Landscape Plan shall include the right-of-way area between the proposed buildings and the Oakland Avenue Bridge, and shall be subject to the approval of the City Parks and Projects Manager.

DR-16. Stormwater Design. In order for the approved development to maintain compliance with the San Francisco Bay Region Municipal Regional Stormwater NPDES Permit, particularly Section C.3.b.ii.(3)'s requirement that impervious surfaces be measured collectively, should amendments to the project affect the impervious surface area measured collectively over the entire project site ever exceed the defined threshold (currently 10,000 square feet), implementation of LID source control, site design, and stormwater treatment on-site or at a joint stormwater treatment facility in accordance with Provisions C.3.c and C.3.d of the NPDES Permit shall be required, unless the Provision C.3.e alternate compliance options are invoked.

DR-17. California's Water Efficient Landscape Ordinance: Property Owner shall comply with the requirements of California's Model Water Efficient Landscape Ordinance that went into effect January 1, 2010, by submitting the following required information to the Building Department:

(a) Landscape Documentation Package that includes the following 6 items:

- a. Project Information;
- b. Water Efficient Landscape Worksheet;
- c. Soil Management Report;
- d. Landscape Design Plan;
- e. Irrigation Design Plan; and
- f. Grading Design Plan.

The Landscape Documentation Package is subject to staff review and approval before the issuance of a building permit.

(b) Once a building permit has been issued, the Property Owner shall submit a copy of the Water Efficient Landscape Worksheet, to the local water purveyor, East Bay Municipal Utility District.

(c) After completion of work, the Property Owner shall submit to the City and East Bay Municipal Utility District a Certificate of Completion, including an irrigation schedule, an irrigation maintenance schedule, and an irrigation audit report . The City may approve or deny the Certificate of Completion.

(The form for the Landscape Document Package and a Frequently Asked Question document on the CA-WELO requirements is available at the Public Works Counter and on the City website at www.ci.piedmont.ca.us).

DR-18. Encroachment Permit. Before the issuance of a building permit, the Property Owner shall apply for an encroachment permit for any private improvement proposed within the public right-of-way or public easement.

DR-19. City Facilities Security. The Property Owner shall provide a specific cash deposit, letter of credit, bank guarantee, or other similar financial vehicle (“City Facilities Security”) in the amount of \$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 Property Owner, Property Owner’s contractors or subcontractors, or any of their agents, employees or assigns, and related in any way to the Project. The form and terms of such City Facilities Security shall be determined by the Director of Public Works after consultation with the Property Owner. The Director may take into account any of the following factors: the cost of construction; past experience and costs; the amount of excavation; the number of truck trips; the physical size of the proposed project; the logistics of construction; the geotechnical circumstances at the site; and City right-of-way and repaving costs.

- a. To provide clear baseline information to assist in determining whether damage to the City’s facilities has been caused by the Property Owner or others working for or on behalf of Property Owner, the City will document such facilities (including, without limitation, streets and facilities along the approved construction route as specified in the Construction Management Plan, to establish the baseline condition of the streets and facilities. The City shall further re-document the streets as deemed appropriate after the Project commences until the Director of Public Works determines that further documentation is no longer warranted. As

part of the documentation, the City may water down the streets to better emphasize any cracks or damage in the surface. The Property Owner is responsible for the full cost of the documentation and related work, and shall reimburse the City for the costs within 21 days after receiving written notification of the work performed and the amount to be reimbursed.

b. When the City Facilities Security is in a form other than cash deposit with the City, the proceeds from the City Facilities Security shall be made payable to the City upon demand, conditioned solely on the Director of Public Works' certification on information and belief that all or any specified part of the proceeds are due to the City.

DR-20. Subsidence. The Property Owner acknowledges and agrees that all work on the Project may be immediately stopped by the City in the event of any unanticipated landslides, subsidence, creep, erosion or other geologic instability, and may not resume until the City Engineer is fully assured that no further subsidence or erosion will occur. If in the opinion of the City Engineer, the instability poses a danger to public or private property, and Property Owner is not responding in a diligent manner, the Director of Public Works may use proceeds from the Site Safety Security required above to address the instability.

DR-21. Neighboring Property Inspection. With each neighbor's consent, a structural engineer (chosen by the City, and paid for by the Property Owner) shall inspect neighboring home at 420 Linda Avenue and apartment building at 1016 Oakland Avenue and the retaining walls adjacent to the Property to be preserved with the intent of establishing base-line information to later be used in determining whether damage was caused by any activities on Property Owner's property (including damage caused by vibrations or other factors due to excavation, construction or related activities). The inspection shall include both foundations and non-foundation related details (walls, windows, general overall condition, etc.) at a level of inspection City Staff deems appropriate. The inspection shall only include readily visible and accessible areas of the neighboring homes. The structural engineer shall provide a full report to the City of his or her conclusions, and the report may be considered in developing the Construction Management Plan. If other independent consultants or specialists are required by the City to review plans and monitor construction activity, they shall be retained at the Property Owner's cost. Before a neighbor agrees to an inspection, City will advise neighbors that the property inspection is necessarily a public record under the California Public Records Act.

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

DR-22. **Window Policy.** The clad wood windows shall be paintable in situ.

DR-23. **Variance Fee.** Because the City Council determined that a variance is not required, the \$710 variance fee shall be returned to the applicants.

DR-24. **Off-Street Parking .** The guest parking space shall remain open and available to short term guest parking, and may not be used for equipment housing or storage, including long term vehicular storage. The two-car garage for each unit shall remain open and available for unit parking and may not be used for equipment housing or storage, including long-term vehicular storage.

DR-25. **Maintenance of City Right-of-Way Area.** In the City right-of-way between the Oakland Avenue bridge and the Project site, the applicant shall provide for maintenance and repair of the walkway, lighting and any landscaping installed at the time of project construction. To guarantee performance of this condition, the Property Owner shall enter into a Maintenance Agreement with the City in a form acceptable to the City Attorney.

DR-26 **Trash/Recycling/Greenwaste.** To insure safe and adequate vehicular back-up and circulation, receptacles for trash, recycling and greenwaste for each unit shall be stored within the space designated in each unit's garage. These receptacles may not be placed in the courtyard except after 6:00 p.m. the night before pick-up through midnight on the evening of the pick-up.

DR-27. **Greenspace Area along Linda Avenue.** Unit owners along Linda Avenue are prohibited from placing any of the following within the front landscaped area between the buildings and the Linda Avenue sidewalk: telecommunications devices (such as satellite dishes); childrens' play structures; barbeques and other outdoor cooking equipment; hardscape surfaces (such as decks or patios); fencing other than that approved as part of the original design review approval (#08-0099); or above-grade mechanical devices (such as air conditioning condensers).

DR-28. **Gate Design.** Prior to the issuance of a building permit, the applicant shall provide a letter from a registered traffic engineer stating that he or she has evaluated the final location and design of the proposed gate in the driveway and that they find that this location is safe and will not present circulation or safety hazards for traffic or pedestrians on Linda Avenue.

DR-29. **Fire Alarms, Sprinklers and Ladders.** The design of the fire ladders shall be subject to Fire Department review prior to the issuance of a building permit. The fire alarms and sprinklers for the property must be maintained and operational at all times, and annually inspected, or as required by the City Fire Marshal.

DR-30. **Alameda County Department of Environmental Health.** As an exception under Section 17.20.2 of the Code, and in order to address requirements from the Alameda County Department of Environmental

Health, the existing prior PG&E Substation building may be issued a demolition permit prior to the issuance of a building permit for the construction of the new townhouses. After demolition of the existing prior PG&E Substation building, but prior to the issuance of a building permit, a "No Further Action for Unrestricted Use" letter relating to the portion of the property currently under the existing building and improvements must be received from the Alameda County Department of Environmental Health.

DR-31. Term of Approval. This Design Review approval (#08-0099) is related to a vesting tentative map application (#11-0062) approved concurrently with this application. The Design Review approval is automatically extended for the life of the vesting tentative map as may be extended by City Council approval or statute. If a building permit is not issued prior to expiration of the vesting tentative map, this design review approval shall expire. However, if the property owners choose to build the project without subdividing the property for condominium ownership under Application #11-0062, this design review approval shall expire two years from final approval of this application.

DR-32. Modifications to Conditions Related to Application (#11-0062). If this design review application is processed concurrently with vesting tentative map Application #11-0062, any Condition of Approval for this design review application that has a similar vesting tentative map condition of approval, may be modified in a reasonable manner with the joint agreement of the Director of Public Works and the City Engineer, provided that the intent of the conditions of both applications has been met.

DR-33. Very Minor Modifications to Minor Design Elements. For minor project features that do not have a direct impact on neighboring properties, minor modifications can be made subject to staff review without the need for notice to neighbors or a hearing, prior to the issuance of a final inspection or certificate of occupancy. At any time and for any reason, staff may require Administrative, Staff or Planning Commission design review for such requested modifications. Minor project features could include exterior light fixture design and the design of the mailboxes, but would not include more substantial elements, such as the design, size and location of windows or doors.

- **With regard to Subdivision/Condominium Consideration of the Project (Application #11-0062):** In accordance with Chapter 19 of the Piedmont Municipal Code and the New Residential Condominium Site and Design Requirements of the Subdivision Manual, the Planning Commission finds that:

A. As conditionally approved, the Project is in compliance with Section 19.33 C.2 of the Piedmont Municipal Code in that the Project meets all of the following:

- i. The proposed map is consistent with the general plan, any policy or guideline implementing the general plan, other applicable provisions of the Piedmont Municipal Code and the Subdivision Manual;
- ii. The site is physically suitable for the type of development;

- iii. The site is physically suitable for the proposed density of development;
- iv. The design of the subdivision or the proposed improvements will not cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.
(Notwithstanding the foregoing, the city council may approve such a tentative map if an environmental impact report was prepared with respect to the project and a statement of overriding considerations was made to the effect that specific economic, social, or other considerations make infeasible the mitigation measures or project alternatives identified in the environmental impact report.);
- e. The design of the subdivision or the type of improvements will not cause serious public health problems; and
- f. The design of the subdivision or the type of improvements will not conflict with easements, acquired by the public at large, for access through or use of property within the proposed subdivision.

B. As conditionally approved, the Project is in compliance with the New Residential Condominium Site and Design Requirements of the Subdivision Manual:

- i. Architectural and Site Design Review: The application has been reviewed subject to the Design Review Criteria and Standards in Section 17.20.9 of the City Code. In reviewing the architectural and site design, the Planning Commission and City Council used (but was not limited to), the following criteria for review:
 - a. The general appearance of the proposed development contributed to the orderly and harmonious development of the community as a whole;
 - b. The site layout, and design of all structures and exterior site features functioned well and created an aesthetically pleasing project;
 - c. The architectural design elements are harmonious and use high quality materials. Efforts to reduce the visual bulk of the structures, such as setbacks, roof ridge height variations, and window recesses were considered. Provisions of the City's Residential Design Guidelines were used to review the architectural and site design;
 - d. The design of the site, structures and exterior features responded to existing site conditions and topography and is compatible with the existing neighborhood context. The design is sensitive to preserving existing neighboring views and privacy;

- e. The general arrangement of the site, including structure locations, parking and vehicular circulation, pedestrian walkways, and common areas creates a safe, desirable environment;
- f. Parked vehicles are generally not visible from the street, and are screened from adjoining properties. Consideration was given to the appearance of garages when viewed from the street;
- g. Utility equipment, such as electrical panels, gas meters, and alarm boxes are commonly grouped for the development, and are not located on a street-facing wall of a structure and/or are enclosed or painted to match the structure color. Mechanical equipment, including, but not limited to, spark arrestors, dryer vents and gas fireplace flues, will be low-profile and painted to match the wall or roof color to the extent possible, and exterior side wall plumbing stacks and vents are not permitted. Sound-rating compliance will be required on all mechanically generated noise including, but not limited to, A/C units, spa and pool equipment, and vents with exterior blowers or fans. Such equipment will be visually screened and located and/or modified with noise reduction features so they do not create a noise impact on any units within the development, and so they meet the maximum allowable decibel reading established by Chapter 5 of the City Code at any property line;
- h. Each condominium unit has a minimum of 200 cubic feet of private, lockable bulk storage area, with at least one minimum floor space dimension of three feet, and a minimum height of four feet, for the storage of personal items, gardening equipment, tires, bicycles, sports equipment and the like, not counting closets in the primary living areas of the unit, and not counting the required 9' x 20' parking spaces;
- i. All trash and recycling facilities, whether individual or common, are fully enclosed and visually screened within the garage of each unit. The facilities are large enough to contain trash, recycled materials and greenwaste for each unit, and are in accordance with any requirements established by the City's waste disposal contractor;
- ii. Environmental Preservation. The design, location and orientation of all buildings has been arranged to preserve natural features by minimizing the disturbance to the physical environment. Natural features, such as trees, waterways, historic landmarks, or slopes, have been delineated in the development plan and considered when planning the location and orientation of buildings, open spaces, underground services, walks, paved areas, play areas, parking areas, and finished grade elevations. Building design and construction methods promote energy conservation, and the site design responds to natural solar and cooling features;

- iii. Landscaping. A comprehensive landscaping plan has been provided that shows all hard-scape and landscape areas, fountains, pools, benches and similar elements, planting materials (including species, number of plants and plant size), and proposed irrigation systems. Special attention has been given to the preservation of existing desirable trees or shrubs, the preservation of existing views, the creation of privacy, and promoting vehicular and pedestrian safety (such as low plantings near driveways and intersections);
- iv. Site Lighting. A lighting plan has been submitted that indicates all on-site lighting systems for buildings, vehicular and pedestrian access ways, landscape lighting, common areas and parking areas. Such lighting shall be directed away from the adjacent properties. Downward directed lights with obscure hoods are encouraged and exterior flood lights are prohibited;
- v. Zoning Regulations. The development conforms to the requirements of Chapter 17 of the Municipal code for the zoning district in which the condominium is proposed;
- vi. Open Space - Common. Common open space areas have been designed and located within the project to afford use by all residents of the project. These common areas include a vehicular driveway and courtyard and open green areas. Such common areas are located to minimize impacts to units within the development and adjoining properties;
- vii. Minimum Parking Requirements. Parking has been provided in compliance with Chapter 17.16 of the City Code. There is a minimum of at least one guest parking space, and additional guest parking spaces have been considered commensurate with the number of units, the size of the units, and the existing off-site parking conditions of the neighborhood;
- viii. Construction and Demolition. Compliance with the Piedmont Construction and Demolition Debris Code is required; and
- ix. Building Regulations. The development shall conform to the requirements of Chapter 5 of the City Code for all matters relating to building code compliance.

THEREFORE BE IT RESOLVED, that based upon the findings and facts set forth heretofore, the Planning Commission recommends City Council approval of Application #11-0062 subject to the following conditions of approval:

SUB-1. **CEQA Mitigation Measures**. The Mitigation Monitoring and Reporting Program (MMRP) related to the Final Environmental Impact Report prepared pursuant to the California Environmental Quality Act prepared for this project (State Clearinghouse #2010032085), are incorporated herein by reference. Compliance with the MMRP is required.

SUB-2. Defense of legal challenges. If there is a third party administrative, legal or equitable action challenging the project approvals, including CEQA issues, the Property Owner shall defend and indemnify the City against any liability, fees and costs arising out of the defense, including the costs of City's own counsel. If such an action is filed, the Property Owner and City shall then enter into an agreement regarding selection of counsel and other provisions related to the defense. For this purpose, "City" includes the City and its elected and appointed officials, agents, officers and employees.

SUB-3. Improvements.

a. Developer shall design and construct all improvements and facilities shown on the approved tentative map, site plan, or other documents submitted for permit approval, in accordance with the Piedmont Municipal Code (PMC), the City of Piedmont Design and Construction Standards. Approval of a tentative map depicting improvements that do not conform to the PMC or City standards does not constitute approval of an exception to the PMC or City standards unless explicitly stated herein or in another City resolution.

b. Improvement plans shall be prepared and submitted by a California Registered Civil Engineer for the construction of all necessary and required on-site and off-site improvements including grading, water, sanitary sewer, storm drain facilities, roadway improvements, curbs, gutters, sidewalks, parkway strips, parking areas and streetlights. All design and construction shall conform to the City of Piedmont Design and Construction Standards, as applicable.

SUB-4. Vesting Tentative Map and Final Map Fees. The developer shall be responsible for all City plan check, map check, inspection costs, and fees and expenses of City consultants as deemed necessary by the City Engineer. The developer shall deposit additional funds as determined necessary by the City Engineer with the City upon the initiation of plan check services. If the cash deposit has been reduced to \$2,500. or less at any time, the City Engineer may require the Property Owner to deposit additional funds to cover any further estimated fees and expenses associated with consultants retained by the City or additional City Staff time and expenses for the Property Owner's Project. Any unexpended amounts shall be refunded to the Property Owner within 90 days after recordation of the Vesting Tentative Map and recordation of the Final Map.

SUB-5. Utility Undergrounding. All existing overhead utilities (of 26,000 volts or less) and proposed utilities, both on-site and along project frontages, shall be placed underground, as proposed by the applicant. This does not include surface mounted transformers, pedestal mounted terminal boxes and meter cabinets.

SUB-6. Existing Wells and Tanks. Unless otherwise explicitly permitted, all existing wells, septic tanks and/or underground fuel storage tanks shall be abandoned under permit and inspection of Alameda County Department of Health Services or other designated agency. If there are none, the project engineer shall provide a letter describing the scope of the search done to make this determination

Improvement Plan and Construction Conditions:

SUB-7. Soils/Geotechnical Report. A detailed Soils Investigation/Geotechnical Report shall be prepared and submitted for review. The report shall address, at a minimum, potential for liquefaction, expansive soils, foundation recommendations, impacts and recommendations for all retaining walls and seismic risk. The improvement plans shall incorporate all design and construction criteria recommended in the Geotechnical Report.

SUB-8. Grading Plan.

a. The grading plan should indicate the ultimate disposition of the existing trees on the property and on the adjacent City Right-of-Way (whether they are going to be removed or stay.)

b. The grading plan shall include a signed statement from the geotechnical engineer stating that the grading plan substantially meets the recommendations and is in conformance with the soils report for the project.

SUB-9. Stormwater Plan. Improvements plans shall include a storm water pollution prevention plan. Erosion control measures shall include hydroseeding of all graded slopes within 60 days of completion of grading. Stormwater BMPs for Construction. Property Owner shall implement (1) stormwater treatment Best Management Practices (BMPs) and (2) 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 Property Owner's Construction Management Plan.

SUB-10. Right-of-Way Improvements:

a. Where new roadway improvements abut existing paving and portions of the existing pavement have to be removed, the existing pavement section shall be saw-cut and reconstructed to provide adequate conforms. The limits of such reconstruction shall be as determined by the City Engineer.

b. Pavement markings and signage shall be provided on Linda Avenue as necessary and as required by the City Engineer. Signage restricting parking and/or red painted curbing shall be installed where appropriate. Speed limit signs and other regulatory and informational signs shall be installed at locations determined by the City Engineer.

c. With the undergrounding of overhead utilities fronting this development, all existing streetlights shall be replaced with new streetlights in similar locations. All new streetlights shall have LED lights in conformance with lighting safety standards (lumen, spread of light and light measured at the ground level) and shall be installed with similar LED lights to those recently installed by the City (BETA lights.) If any of the lights that will be replaced contain LED lights that were recently replaced by the City, the light heads shall be reused to the

extent possible, or the existing LED light(s) shall be returned to the City's Public Works Department.

d. Sidewalks shall be constructed for access to all buildings and along the frontage of Linda Avenue in conformance with ADA and California Title 24 requirements. Sidewalk warps shall be provided as necessary to allow a clear four-foot wide walkway at all locations, including areas where mailboxes, streetlights, and fire hydrants obstruct sidewalks. Additionally, construction of level areas behind the proposed driveway into this development must be included to have at least a 4 foot area behind the driveway apron that has no more than a 2% cross-fall extending behind the entire width of the driveway apron.) If this level area of the sidewalk falls outside of the existing right-of-way, a public access easement shall be dedicated on the map. A colored concrete sidewalk per City Standards shall also be constructed from the existing sidewalk on Oakland Avenue to Linda Avenue. The design of this sidewalk, to the extent practical (given the existing slope and site constraints) shall adhere to ADA standards with respect to width and slope. All broken or sunken curb, gutter and sidewalk along the project frontage shall be repaired as part of the improvements for this project.

e. As part of the improvement plans, the applicant shall provide a letter from a registered traffic engineer stating that he or she has evaluated the final location and design of the proposed gate in the driveway and that they find that this location is safe and will not present circulation or safety hazards for traffic or pedestrians on Linda Avenue.

SUB-11. Water and Sanitary Sewer Improvements:

a. All private water mains, sewer mains and storm drains shall be clearly labeled "Private" on the improvement plans.

b. The improvement plans shall indicate that all private sanitary sewer systems must meet the Regional Private Sewer Lateral Ordinance and any City of Piedmont Sewer Ordinance in effect at the time of the improvement plan submittal.

c. Sewer grades must be designed such that ultimate finished floors are a minimum of 12" above upstream manhole or clean-out rim elevations. Inadequate elevation differentials or grade on private laterals, as determined by the City, must be mitigated by either raising finished floor elevation(s) or installing privately owned and operated sewer lift station(s) with grinder/ejector pump(s) on site.

c. All water improvements shall conform to the EBMUD standards and approvals for the improvements must be provided to the City of Piedmont prior to final approval of the overall improvement plans.

d. Backflow preventers shall be installed on all main services to this development (including both domestic and landscaping services.)

SUB-12. Drainage Improvements:

a. All project related flooding impacts shall be mitigated by the project developer. Drainage improvements shall be designed in accordance with the Design Criteria utilizing the rationale method.

The applicant shall submit for review and approval, drainage plans and hydraulic calculations prepared by a Registered Civil Engineer. The drainage plans and calculations shall indicate the following conditions before and after development:

Quantities of water, water flow rates, major water courses, drainage areas and patterns, diversions, collection systems, flood hazard areas, sumps and drainage courses.

b. Post-development off-site flows shall not exceed pre-development flows. The development will need to restrict flows out of the development and detain some storm water on the site or in underground pipes, and release it at a flow that will not overtax the downstream system. All drainage improvements shall be shown on the improvement plans.

c. All onsite storm drain facilities shall be private and should be labeled as such.

d. The entry driveway and parking/turnaround areas in the complex are all in a sump condition (no flows can exit out of the site naturally.) The storm drain system draining this area shall be sized for 100-yr. event and/or 100-year flow relief points shall be provided such that the driveway and parking/turnaround areas do not flood during 100-year storm events.

e. For the proposed private storm drain system at the southwest corner of 1016 Oakland Avenue, a 10-foot easement/clear area from the structure (with pipe centered in 10 foot area) shall be provided for this storm drain pipe for maintenance. If this requires an easement from the neighboring property, evidence of a fully executed easement shall be provided to the City Engineer's office for checking prior to recordation. If this easement is needed, it shall be recorded prior to or in conjunction with the recordation of the final map.

f. No lot to lot drainage is allowed. No concentrated drainage may discharge across sidewalks. All site drains must be connected to the public storm drain system, or discharged through the face of curb or to an established waterway.

SUB-13. CC&Rs: Before approval of the final map, the subdivider shall submit a copy of the proposed CC&Rs. The CC&Rs shall include the following, and these terms are subject to review and approval by the City Attorney:

a. Guest parking. The guest parking space shall remain open and available to short-term guest parking, and may not be used for equipment housing or storage, including long-term vehicular storage.

- b. Common area maintenance. Provide for maintenance of all common areas, including landscaping.
- c. Maintenance of City right-of-way area. In the City right-of-way connecting Oakland Avenue and Linda Avenue, provide for maintenance and repair of the walkway, lighting and any landscaping installed at the time of project construction. To guarantee performance of this condition, the Property Owner shall enter into a Maintenance Agreement with the City in a form acceptable to the City Attorney.
- d. Trash/Recycling/Greenwaste. To insure safe and adequate vehicular back-up and circulation, receptacles for trash, recycling and greenwaste for each unit shall be stored within the space designated in each unit's garage. These receptacles may not be placed in the courtyard except after 6:00 p.m. the night before pick-up through midnight on the evening of the pick-up.
- e. Greenspace Area along Linda Avenue. Unit owners along Linda Avenue are prohibited from placing any of the following within the front landscaped area between the buildings and the Linda Avenue sidewalk: telecommunications devices (such as satellite dishes); childrens' play structures; barbeques and other outdoor cooking equipment; hardscape surfaces (such as decks or patios); fencing other than that approved as part of the original design review approval (#08-0099); or above-grade mechanical devices (such as air conditioning condensers).
- f. Fire Alarms, Sprinklers and Ladders. The design of the fire ladders shall be subject to Fire Department review prior to the issuance of a building permit. The fire alarms and sprinklers for the property must be maintained and operational at all times, and annually inspected, or as required by the City Fire Marshal.
- g. City as third party beneficiary. Provide that as to these specific terms (identified by CC&R section number) and any other CC&R provisions required by Condition of approval numbers DR-24 through DR-27 (related to Design Review):
 - i. The City is a third party beneficiary and has the right, but not the obligation, to enforce these provisions; and
 - ii. These provisions may not be amended except with written approval of the City.
- h. Off-Street Parking. The two-car garage for each unit shall remain open and available for unit parking and may not be used for equipment housing or storage, including long-term vehicular storage.

Final Map Conditions:

SUB-14. A final map, as defined in the State Subdivision Map Act, shall be prepared by a licensed surveyor or civil engineer, showing all parcels, rights-of-way, and easement(s) and filed with the City Engineers Office. The final map shall be in substantial conformance with the approved Tentative Map and all applicable conditions of approval. The final map is not valid until it has been approved and recorded.

SUB-15. A condominium plan sufficiently detailed with regard to units and lots to determine substantial compliance with the tentative map shall accompany the final map.

SUB-16. The developer shall secure all necessary rights-of-way and easements for both onsite and offsite improvements. Rights-of-way and easements shall be dedicated on the map or provided by separate instrument. The developer shall prepare all necessary legal descriptions and deeds. Offers of dedication shall be in (easement/fee).

SUB-17. The applicant shall transmit by certified mail a copy of the conditionally approved Tentative Map together with a copy of Section 66436 of the State Subdivision Map Act to each public entity or public utility that is an easement holder of record. Written compliance shall be submitted to the City of Piedmont

SUB-18. The final map shall not be approved prior to approval of the improvement plans.

SUB-19. Should it be necessary, the developer shall pay all costs associated with any necessary vacation or abandonment of public rights-of-way or easements and shall prepare all necessary documents and post all required notifications.

SUB-20. Prior to approval of the final map, the developer shall either complete required public improvements in accordance with the approved improvement plans, or enter into an Improvement Agreement. If an Improvement Agreement is pursued, the developer shall be required to post surety (Performance, Labor and Material, Monument and Maintenance bonds.) No certificate of occupancy shall be issued for any structure until required improvements are completed to the satisfaction of the City Engineer.

Construction Conditions:

SUB-21. **Alameda County Department of Environmental Health.** In order to address requirements from the Alameda County Department of Environmental Health, the existing prior PG&E Substation building may be issued a demolition permit prior to the issuance of a building permit for the construction of the new townhouses. After demolition of the existing prior PG&E Substation building, but prior to the issuance of a building permit, a "No Further Action for Unrestricted Use" letter relating to the portion of the property currently under the existing building and improvements must be received from the Alameda County Department of Environmental Health.

SUB-22. No grading or other construction shall be performed until the improvement plans have been approved and signed by the City Engineer. Encroachment Permits and Building Permits will not be issued prior to the approval of the improvement plans. An Encroachment Permit is required for any work within the City's rights of way.

SUB-23. The developer shall keep adjoining public streets free and clean of project dirt, mud, materials, and debris during the construction period, as is found necessary by the City Engineer.

SUB-24. If any hazardous waste is encountered during the construction of this project, all work shall be immediately stopped and the Alameda County Environmental Health Department, the Fire Department, the Police Department, and the City Director of Public Works shall be notified immediately. Work shall not proceed until clearance has been issued by all of these agencies.

SUB-25. Prior to final preparation of the subgrade and placement of base materials, all underground utilities shall be installed and service connections stubbed out behind the sidewalk. Public utilities, Cable TV, sanitary sewers, and water lines, shall be installed in a manner which will not disturb the street pavement, curb, gutter and sidewalk, when future service connections or extensions are made.

SUB-26. Where soil or geologic conditions encountered in grading operations are different from that anticipated in the soil and/or geologic investigation report, or where such conditions warrant changes to the recommendations contained in the original soil investigation, a revised soil or geologic report shall be submitted for approval by the City Engineer. It shall be accompanied by an engineering and geological opinion as to the safety of the site from hazards of land slippage, erosion, settlement, and seismic activity. Additionally, if field conditions warrant installation of any subdrains, the location, size and construction details must be provided to the City for review and approval prior to construction.

DR-27. The Property Owner shall develop a comprehensive Construction Management Plan for the construction of improvements. 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 has the authority to require modifications and amendments to the Construction Management Plan as deemed necessary throughout the course of the Project and until the Final Inspection.

- a. Property Owner shall implement (1) stormwater treatment Best Management Practices (BMPs) and (2) 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 Property Owner's Construction Management Plan and should include:
- b. Construction crews shall be instructed in preventing and minimizing pollution on the job.
- c. Stabilize construction entrance/exit to prevent tracking onto roadway. Only one stabilized construction entrance/exit will be allowed per site, unless otherwise approved by the City Engineer. Vehicles entering and leaving construction sites spread pollutants such as sediment, gravel, and other loose

particles onto adjacent roads. Pollutants are washed into roadside ditches and are a nuisance to drivers and may cause damage to vehicles.

- d. Protect exposed slopes from erosion through preventative measures. Cover slopes to avoid contact with storm water by hydro-seeding, mulch, use of plastic sheeting or other approved means.
- e. Use brooms and shovels when possible to maintain a clean site. Use of a hose is not recommended. Introducing water as a cleanup method adds to water pollution.
- f. Designate a concrete washout area, if needed, to avoid wash water from concrete tools or trucks from entering storm drain systems. Maintain washout area and dispose of concrete waste on a regular basis.
- g. Establish a vehicle storage, maintenance, and refueling area, if needed, to minimize the spread of oil, gas, and engine fluids. Use of oil pans under stationary vehicles is strongly recommended.
- h. Protect drain inlets from receiving polluted storm water through the use of filters such as fabrics, gravel bags or straw wattles.
- i. Be prepared for rain and have the necessary materials onsite before the rainy season.
- j. Inspect all BMPs before and after each storm event. Maintain BMPs on a regular basis and replace as necessary, through the entire course of construction.

SUB-28. All streets, curbs, gutters, sidewalks or other public facilities damage in the course of construction associated with this development shall be the responsibility of the Developer and shall be repaired to the satisfaction of the City at the Developer's expense.

Subdivision Final and/or Release of Securities Conditions:

SUB-29. All public improvements shown on the Improvement Plans shall be completed and accepted by the City.

SUB-30. All punch-list work shall be completed and any outstanding inspection fees or other charges shall be paid.

SUB-31. Video inspections shall be made of all public storm drain lines constructed with this project (if any) to ensure that they are clean of dirt, rocks, debris or other material. Contractor/developer shall be responsible for cleaning and flushing all storm drain lines prior to acceptance by the City. If flushing of the storm drain system is required, the contractor/developer shall put sufficient plugs/filters in place to ensure that any debris, mud or other material is not washed beyond the piping system in the development nor into any natural water

course. A copy of the DVD of all storm drain lines shall be delivered and reviewed by the City prior to acceptance.

SUB-32. Developer shall provide sufficient surety (maintenance bond) guaranteeing the public improvements for a period of one year prior to the acceptance of the public improvements.

SUB-33. A complete set of *As-Built* or Record improvement plans showing all substantial changes from the original plans shall be certified by the Civil Engineer of record and submitted to the City Engineer prior to acceptance of the public improvements.

SUB-34. Prior to acceptance of the work, the developer shall provide a written statement signed by his or her engineer certifying that they observed the private work during construction and that site grading and all private site improvements have been completed in accordance with the improvement plans approved by the City Engineer.

SUB-35. Prior to acceptance of the work, the developer shall provide a written statement signed by his or her geotechnical engineer certifying that they observed the work and reviewed testing results, and that all of work was performed in accordance with the recommendations included in the Soils Investigation/Geotechnical Report or other recommendations necessitated by field conditions.

SUB-36. If this application is processed concurrently with design review Application #08-0099, any Condition of Approval for this vesting tentative map application that has a similar design review condition of approval, may be modified in a reasonable manner with the joint agreement of the Director of Public Works and the City Engineer, provided that the intent of the conditions of both applications has been met.

- **With regard to the Project's Traffic/Parking Analysis:** The Planning Commission's finds that:

the traffic analysis and adequacy of the project's on-site parking and traffic flow, particularly along Linda Avenue, and potential affected parking on Linda Avenue and adjoining neighborhood, is specifically addressed by the *Supplemental Parking Study for the Piedmont Station Project*, dated July 8, 2011, by W-trans. This study satisfactorily indicates that due diligence has been provided in analyzing the proximate parking needs on the property caused by the 7 proposed units, plus the traffic safety and circulation along Linda Avenue and adjoining streets as well as potential for affect on on-street parking.

Moved by Kellogg, Seconded by Thiel

Ayes: Chase, Henn, Kellogg, Robertson, Thiel

Noes: None

Absent: None

The Commission recessed for dinner at 8:15 p.m. and reconvened at 8:50 p.m. Commissioner Thiel was excused from the meeting at 8:50 p.m.

**Variance, Design
Review & Fence
Design Review
44 Farragut Avenue**

Panama City Partners, LLC is requesting variance, design review and fence design review to demolish the existing pool and equipment shed and construct a new pool and spa along with a new cabana and equipment enclosure; make site improvements throughout the rear and east side yards, including: a new bocce court; new retaining walls and guardrails; new fountain; new counter; new and relocated fencing; new exterior lighting; hardscape and landscape changes; and minor changes to previously approved patio terraces and garage roof deck guardrail. The requested variance is from Section 17.22.2(c) to allow a previously approved floor area ratio of 53.9% to be increased to 54.3% (because of the habitable space of the bathroom in the new cabana) in lieu of the code permitted maximum of 45%. A related application was approved by the Commission on June 13, 2011.

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

Public testimony was received from:

Marc Furstein stated that the current application focuses on improving his property's rear yard as a recreational area for his children and to provide a conveniently located bathroom for swimming pool users -- currently the only available bathroom is located up a flight of steps and in the house, quite a distance from the pool. He also explained how the proposal will improve property privacy for both his family as well as neighbors and correct a drainage problem which has existed on the property for years.

Jeff George, Landscape Architect, reviewed the proposed rear yard landscaping and garden elements as well as changes to the previously approved plan to reduce the amount of hardscape on the property.

Bennett Christopherson, Project Architect, explained how drainage problems on the property will be corrected and how the design detailing of the proposed improvements will integrate these additions into the garden and with the rest of the home. He emphasized that the floor area ratio excess is a pre-existing condition and is only being modestly increased by the addition of a much-needed toilet room near the pool.

Dan Levine, described the extensive drainage problems/damages he has incurred as a result of construction by a previous owner of 44 Farragut. He thanked Mr. Furstein for his willingness to remedy the drainage situation and urged Commission approval of the project.

The Commission supported application approval, agreeing that the improvements will enhance the aesthetics and usability of the property, are well integrated with the main house and the proposed cabana/toilet addition is attractively designed, logical as to need and inconspicuous in its location. The Commission supported variance approval, agreeing that there is no negative impact on neighbors, the modest nature of the variance and the necessity for having toilet facilities conveniently available for pool users. As to the proposed fence, the Commission requested that it be modified along the King Avenue frontage so as to be stepped and range in height from 5 ft. to a maximum of 6-1/2 ft.

along the north side of the gate. The fence along the south side of the gate can be constructed as proposed.

Resolution 202-V-11

WHEREAS, Panama City Partners, LLC is requesting permission to demolish the existing pool and equipment shed and construct a new pool and spa along with a new cabana and equipment enclosure; make site improvements throughout the rear and east side yards, including: a new bocce court; new retaining walls and guardrails; new fountain; new counter; new and relocated fencing; new exterior lighting; hardscape and landscape changes; and minor changes to previously approved patio terraces and garage roof deck guardrail located at 44 Farragut Avenue, Piedmont, California, which construction requires variance; and

WHEREAS, a variance from the requirements of Chapter 17 of the Piedmont City Code is necessary in order to exceed the 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 project is categorically exempt under the California Environmental Quality Act, pursuant to Section 15301, Class 1(e)
2. The underlying lot and existing improvements present unusual physical circumstances, including but not limited to the topography of the lot, the fact that the existing home already exceeds the floor area ratio limitation and the location of the house and existing bathroom in relation to the pool . 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.
3. The variance is compatible with the immediately surrounding neighborhood and the public welfare because the proposed improvement will be screened by mature landscaping, the lot's topography and is attached to a beautifully designed outdoor structure.
4. Accomplishing the improvement without a variance would cause unreasonable hardship in planning, design, or construction because of the lot's topography and the location of the existing house in relation to the pool.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the variance application of Panama City Partners for the above variance at 44 Farragut Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City.

RESOLVED FURTHER, that the approval of the Planning Commission/City Council and any conditions of that approval shall not extend to any particulars set forth in the documents submitted for the project which are inconsistent with or in violation of any applicable

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

Moved by Robertson, Seconded by Kellogg

Ayes: Chase, Henn, Kellogg, Robertson, Zhang

Noes: None

Absent: Thiel

Resolution 202-DR-11

WHEREAS, Panama City Partners, LLC is requesting permission to demolish the existing pool and equipment shed and construct a new pool and spa along with a new cabana and equipment enclosure; make site improvements throughout the rear and east side yards, including: a new bocce court; new retaining walls and guardrails; new fountain; new counter; new and relocated fencing; new exterior lighting; hardscape and landscape changes; and minor changes to previously approved patio terraces and garage roof deck guardrail located at 44 Farragut Avenue, Piedmont, California, which construction requires design review; and

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

1. The exterior design elements (including but not limited to height, bulk, area openings, breaks in the façade, line and pitch of the roof, materials, arrangements of structures on the parcel, and concealment of mechanical and electrical equipment) are aesthetically pleasing as a whole and harmonious with existing and proposed neighborhood development in that the project complies with Design Review Guidelines II-1, II-2, II-3, II-3(a), (c) & (d), II-4, II-5, II-6(a) & (b), II-7(a), IV-1, IV-1(b), IV-2, IV-2(a), IV-3, IV-3(a), IV-4, V-1, V-2, V-3, V-5, V-5(a), (b) & (c) and V-6.

2. The design is appropriate, considering its effect on neighboring properties' existing views, privacy and access to direct and indirect light because it has been sensitively designed to respect neighboring properties. The project complies with the above-cited Guidelines.

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

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review application of Panama City Partners for construction at 44 Farragut Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

1. **Property Line Location Verification.** The east, west and south property lines shall be located and marked by a California-licensed land surveyor or civil engineer prior to construction in order to verify that the new structures, retaining walls and fencing are constructed at the approved location on the applicant's property.

2. **Stormwater BMP Plan.** 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, as outlined in *Blueprint for a Clean Bay*, will need to be developed by the applicant prior to obtaining a building permit;

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

4. **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;

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

6. **Fence.** The portion of the fence north of the gate along the King Avenue side frontage shall be stepped at a minimum height of 5 ft. and a maximum height of 6-1/2 ft. The portion of the fence south of the gate shall be constructed as proposed in the submitted plans.

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

Moved by Robertson, Seconded by Kellogg

Ayes: Chase, Henn, Kellogg, Robertson, Zhang

Noes: None
Absent: Thiel

**Variance and
Design Review
100 St. James Drive**

Mr. and Mrs. Rajeev Bhatia are requesting variance and design review to add two bedroom suites to the existing 1-story, 3-bedroom house by constructing a 921 sq. ft. second story addition with window and skylight modifications; make various changes to the interior; and construct a trellis-covered 1-car carport at the north end of the house. The requested variance is from Section 17.16 to allow a house with five rooms eligible for use as bedrooms to have two conforming and one non-conforming covered parking spaces in lieu of the code required minimum of three conforming parking spaces (the non-conforming parking space measures 9 ft. by 19 ft. 5 in. in lieu of the code required minimum size of 9 ft. by 20 ft.).

A similar application was denied, without prejudice, on April 11, 2011.

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

Public testimony was received from:

Rajeev Bhatia stated that he reviewed the plans with his neighbor, Nancy Mar (30 LaSalle Court), who voiced concern at the April meeting and it was mutually agreed that: (1) the project will not intrude upon her privacy or Bay view; and (2) they will both fill in the existing vegetation gap between their two properties with new plantings. Ms. Mar no longer opposes project approval. Mr. Bhatia stated that while he is agreeable to constructing a trellis covering over the third parking space, he would prefer not to in order to avoid damaging an existing oak tree.

Robert Swatt and Steven Stept, Project Architects, reviewed the design changes made in response to the April meeting and displayed colored sketches showing the visual perspective of the addition from several elevation vantage points. They noted that an agreement has been reached with Ms. Mar regarding the roof color and the elimination of one window from the stairwell. In addition, they requested the option to install either wood or aluminum windows in the addition depending upon which product can be appropriately sized to fit the proposed window openings. The existing house has a mix of wood and aluminum windows painted white and the new windows will also be painted to match existing.

Emily Gorin supported application approval, stressing that the applicant's home is located on a very secluded, wooded lot and is not readily visible to any neighbors.

The Commission agreed that the redesign was responsive to Commission requests, well integrated into the existing home and imposed no visual impact on adjacent neighbors. The Commission supported variance approval, noting that the 2-car garage is functional for 2-car parking -- it is only deficient in depth by 7 inches for one of the two spaces. As to the proposed trellis over the existing parking pad, the Commission agreed to let the applicant decide whether to construct

or eliminate this trellis. The Commission noted that while the trellis is an attractive feature to the property, its presence would make ingress/egress into this parking area more difficult and restrict the number of cars that can actually be parked in this court area. It was noted that this parking area is not visible to the public or neighbors. The Commission cited City Code Section 17.22.(4)(a) as a basis for allowing the third parking space to be uncovered.

Resolution 205-V-11

WHEREAS, Mr. and Mrs. Rajeev Bhatia are requesting permission to add two bedroom suites to the existing 1-story, 3-bedroom house by constructing a 921 sq. ft. second story addition with window and skylight modifications; make various changes to the interior; and construct a trellis-covered 1-car carport at the north end of the house located at 100 St. James Drive, Piedmont, California, which construction requires variance; and

WHEREAS, a variance from the requirements of Chapter 17 of the Piedmont City Code is necessary in order to add two rooms eligible for use as a bedroom without supplying the required parking; and

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

1. The project is categorically exempt under the California Environmental Quality Act, pursuant to Section 15301, Class 1(e)
2. The underlying lot and existing improvements present unusual physical circumstances, including but not limited to the steep slope of the property and the fact that the existing 2-car garage accommodates the parking of two vehicles (it is only short in depth by 7 inches from being code compliant) and the existing uncovered parking pad is not visible to the public. 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.
3. The variance is compatible with the immediately surrounding neighborhood and the public welfare because there is no impact.
4. Accomplishing the improvement without a variance would cause unreasonable hardship in planning, design, or construction because of the property's steep slope and the finding that pursuant to City Code Section 17.22.4(a) (v) the property represents an unique existing parking circumstance.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the variance application of Mr. and Mrs. Bhatia for the above variance at 100 St. James Drive, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following condition:

- the applicant has the option of either covering the existing parking pad with a trellis as shown on submitted plans or leaving this area uncovered.

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 Chase, Seconded by Kellogg

Ayes: Chase, Henn, Kellogg, Robertson, Zhang

Noes: None

Absent: Thiel

Resolution 205-DR-11

WHEREAS, Mr. and Mrs. Rajeev Bhatia are requesting permission to add two bedroom suites to the existing 1-story, 3-bedroom house by constructing a 921 sq. ft. second story addition with window and skylight modifications; make various changes to the interior; and construct a trellis-covered 1-car carport at the north end of the house located at 100 St. James 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 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 and adjacent residences is reasonable -- the applicant has taken diligent steps to insure that neighbor views are not impacted--and it is 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 necessary to reduce losses of ambient and reflected light because the desire to add a second story creates a need for such setbacks and a structure that is compatible with the existing architectural style of the residence. The project complies with Design Review Guidelines II-1, II-2, II-3, II-3(a) through (d), II-4, II-6, II-6(a) through (c), II-7, II-7(a), III-1, III-1(a), III-2, III-2(a), III-4, III-5, III-5(a), III-6, III-6(a), III-7 and III-7(a).

2. The proposed upper level addition 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 minimizes view and light impacts on neighbors. The project complies with the above-cited Guidelines.

3. The size and height of the addition is commensurate with the size of the lot (excluding the portions of the lot that cannot reasonably be built on), and is in keeping with the existing neighborhood development pattern. The property is very steeply sloped except where the existing home is located. The project complies with the above-cited Guidelines.

4. The safety of residents, pedestrians, and vehicle occupants and the free flow of vehicular traffic are not adversely affected, considering the circulation pattern, parking layout and points of ingress and egress. There is no impact on circulation patterns. The project complies with the above-cited Guidelines.

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

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

2. **Construction Completion Schedule.** Work on the Project, once begun, shall be promptly executed with continuous good faith and reasonable progress. Since timely completion of this Project is of the essence, the Property Owner shall submit for approval a Construction Completion Schedule, which will specify, in detail, the duration and percentage complete of each phase.

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

- i. Completion of Excavation;
- ii. Completion of Retaining Walls;
- iii. Completion of Foundation;
- iv. Completion of Rough Framing;
- v. Completion of Electrical;
- vi. Completion of Plumbing;
- vii. Completion of Mechanical;

- viii. Completion of Fire Sprinklers;
- ix. Completion of Home;
- x. Completion of Hardscaping and Landscaping; and
- xi. any further construction benchmarks and conditions of occupancy as may be determined by the Director of Public Works.

b. Before the Project begins, the Director of Public Works shall make a determination as to the reasonableness of the proposed completion dates applicable to the Project, and that determination shall constitute the "Approved Schedule" and be binding on the Property Owner. The City may, at the Property Owner's sole cost, engage the services of a consultant to review the Property Owner's proposed Construction Completion Schedule and, to the extent the period allocated for any work appears unjustifiable, recommend to the Director of Public Works a reasonable completion date for any benchmark.

d. If the work for any specific benchmark has not been completed within 90 days after the completion date set forth in the Approved Schedule, and the delay in completion has not been caused by force majeure, the Director of Public Works has the option at any time thereafter to make a claim against the Property Owner's Performance Security, if one is required, in order to complete the benchmark.

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

4. Contractor's General Liability Insurance. To ensure that the contractor doing work in the City will be responsible for damages caused by the work to City property or to neighboring property, the Property Owner shall require all contractors 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. The insurance shall include builder's risk. The insurance shall include an endorsement requiring 30 days' notice to the City if the insurance is cancelled or changed, and Property Owner shall immediately arrange for substitute insurance coverage.

As an alternative to requiring each subcontractor to obtain General Liability Insurance, the Property Owner may require the General Contractor to obtain an endorsement to cover his or her subcontractors.

If the Property Owner does not have a general contractor, the Property Owner shall maintain property insurance, including builder's risk and coverage for subcontractors, which is substantially equivalent to the contractor's requirement of this section.

5. Defense of Legal Challenges. If there is a third party administrative, legal or equitable action challenging the project approvals, including CEQA issues, the Property Owner shall defend

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

6. **Windows.** The applicant has the option to install either new wood or aluminum windows, subject to staff review and approval.

7. **Roof Finish.** The new addition shall have a non-glare roof finish compatible with the home's existing roof.

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 Chase, Seconded by Kellogg

Ayes: Chase, Henn, Kellogg, Robertson, Zhang

Noes: None

Absent: Thiel

**Variance and
Design Review
409 Park Way**

Mr. Dennis Markus is requesting variance and design review to make modifications to the property including to: demolish approximately 160 sq. ft. of the existing single story rear yard structure attached to the main house; construct an approximately 327 sq. ft. single story rear addition to accommodate a new family room; make changes to the interior; make roof modifications including the addition of new skylights and chimney flues; make window and door modifications; add exterior lighting; and make landscape and hardscape changes including a new rear yard patio. The requested variance is from Section 17.110.4 to allow a structure coverage of 43.36% in lieu of the code permitted maximum of 40%.

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

Public testimony was received from:

Dennis Markus and Howard Debow reviewed the history of their property and cited their objectives in (1) modernizing this historic Monterey Colonial home to meet current living standards as well as creating more functional indoor/outdoor living space; (2) restoring its original architectural integrity; and (3) providing a greater degree of privacy to both themselves and neighboring property. They also noted that an upward expansion design was considered as a way to avoid variance, but it was determined that upward expansion would have a significant detrimental impact on neighboring property.

Frank Bergamaschi, Project Architect, distributed sketches of the existing house in relation to neighboring property and emphasized that the variance is necessary in order to preserve the architectural heritage of this old home. He stated that every home in the neighborhood exceeds the Code's structural coverage limit and he felt that the applicants' proposal is appropriate for administrative relief from variance. It was noted that the proposal exceeds the structure coverage limit by approximately 138 sq. ft.

The Commission agreed that the design of the project is attractive, corrects 1970's era renovation mistakes, creates a more livable and private environment for the applicants and is well integrated with the existing house. As to variance, the Commission supported approval, citing the fact that since almost every home in the neighborhood exceeds the City's lot coverage limit, granting variance approval in this case would not convey a special privilege to the applicants and would allow the applicants' property to be used in the same manner as other properties in the area. Also, variance approval would (1) maintain the architectural heritage and important design elements of the existing home by allowing the home's balcony and porch (which are not functional living spaces but do count against the property's structural coverage) to remain; (2) avoid negatively impacting neighboring property through the addition of an upward expansion; and (3) is appropriate pursuant to the intent of City Code Section 17.22.4.

Resolution 206-V-11

WHEREAS, Mr. Dennis Markus is requesting permission to make modifications to the property including to: demolish approximately 160 sq. ft. of the existing single story rear yard structure attached to the main house; construct an approximately 327 sq. ft. single story rear addition to accommodate a new family room; make changes to the interior; make roof modifications including the addition of new skylights and chimney flues; make window and door modifications; add exterior lighting; and make landscape and hardscape changes including a new rear yard patio located at 409 Park Way, Piedmont, California, which construction requires variance; and

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

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

1. The project is categorically exempt under the California Environmental Quality Act, pursuant to Section 15301, Class 1(e)
2. The underlying lot and existing improvements present unusual physical circumstances, including but not limited to the fact that the property is located in a neighborhood with almost uniformly larger structure coverage ratios. 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. In addition, under City Code Section 17.22.4(2) the project as proposed preserves the architectural heritage of the house and its compatibility with surrounding structures.

3. The variance is compatible with the immediately surrounding neighborhood and the public welfare because there is no impact.
4. Accomplishing the improvement without a variance would cause unreasonable hardship in planning, design, or construction because the existing house has historic architectural features which contribute to the property's structure coverage but are not usable living spaces and therefore, reducing/eliminating these features would detract from and lessen the property's overall good design.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the variance application of Mr. Markus for the above variance at 409 Park 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 Chase, Seconded by Robertson

Ayes: Chase, Henn, Kellogg, Robertson, Zhang

Noes: None

Absent: Thiel

Resolution 206-DR-11

WHEREAS, Mr. Dennis Markus is requesting permission to make modifications to the property including to: demolish approximately 160 sq. ft. of the existing single story rear yard structure attached to the main house; construct an approximately 327 sq. ft. single story rear addition to accommodate a new family room; make changes to the interior; make roof modifications including the addition of new skylights and chimney flues; make window and door modifications; add exterior lighting; and make landscape and hardscape changes including a new rear yard patio located at 409 Park Way, Piedmont, California, which construction requires design review; and

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

1. The exterior design elements (including but not limited to height, bulk, area openings, breaks in the façade, line and pitch of the roof,

materials, arrangements of structures on the parcel, and concealment of mechanical and electrical equipment) are aesthetically pleasing as a whole and harmonious with existing and proposed neighborhood development in that the project complies with Design Review Guidelines II-1, II-2, II-3, II-3(a) through (d), II-4, II-6, II-6(a) through (c), II-7 and II-7(a).

2. The design is appropriate, considering its effect on neighboring properties' existing views, privacy and access to direct and indirect light because there appears to be none or very minimal impact and all surrounding neighbors support the project. The project complies with the above-cited Guidelines.

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

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review application of Mr. Markus for construction at 409 Park Way, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

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

a. Stormwater BMPs for Construction. Property Owner shall implement (1) stormwater treatment Best Management Practices (BMPs) and (2) 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 Property Owner's Construction Management Plan.

2. **Construction Completion Schedule.** Work on the Project, once begun, shall be promptly executed with continuous good faith and reasonable progress. Since timely completion of this Project is of the essence, the Property Owner shall submit for approval a Construction Completion Schedule, which will specify, in detail, the duration and percentage complete of each phase.

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

- i. Completion of Excavation;
- ii. Completion of Retaining Walls;
- iii. Completion of Foundation;
- iv. Completion of Rough Framing;
- v. Completion of Electrical;
- vi. Completion of Plumbing;
- vii. Completion of Mechanical;
- viii. Completion of Fire Sprinklers;
- ix. Completion of Home;
- x. Completion of Hardscaping and Landscaping; and
- xi. any further construction benchmarks and conditions of occupancy as may be determined by the Director of Public Works.

b. Before the Project begins, the Director of Public Works shall make a determination as to the reasonableness of the proposed completion dates applicable to the Project, and that determination shall constitute the "Approved Schedule" and be binding on the Property Owner. The City may, at the Property Owner's sole cost, engage the services of a consultant to review the Property Owner's proposed Construction Completion Schedule and, to the extent the period allocated for any work appears unjustifiable, recommend to the Director of Public Works a reasonable completion date for any benchmark.

e. If the work for any specific benchmark has not been completed within 90 days after the completion date set forth in the Approved Schedule, and the delay in completion has not been caused by force majeure, the Director of Public Works has the option at any time thereafter to make a claim against the Property Owner's Performance Security, if one is required, in order to complete the benchmark.

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

4. **Contractor's General Liability Insurance.** To ensure that the contractor doing work in the City will be responsible for damages caused by the work to City property or to neighboring property, the Property Owner shall require all contractors 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. The insurance shall include builder's risk. The insurance shall include an endorsement requiring 30 days' notice to the City if the insurance is cancelled or changed, and Property Owner shall immediately arrange for substitute insurance coverage.

As an alternative to requiring each subcontractor to obtain General Liability Insurance, the Property Owner may require the General Contractor to obtain an endorsement to cover his or her subcontractors.

If the Property Owner does not have a general contractor, the Property Owner shall maintain property insurance, including builder's risk and coverage for subcontractors, which is substantially equivalent to the contractor's requirement of this section.

5. **Windows.** The new windows shall be the same color as the remaining existing windows.

6. **Lights.** Any new divided lights shall be true or three dimensional simulated.

7. **Flashing.** The flashings of the skylights and the fireplace flues shall be painted to closely match the roof color.

8. **Exterior Light Fixtures.** The exterior light fixtures shall have an opaque or translucent shade that completely covers the light bulb.

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

Moved by Chase, Seconded by Robertson

Ayes: Chase, Henn, Kellogg, Robertson, Zhang

Noes: None

Absent: Thiel

ADJOURNMENT

There being no further business, Chairman Henn adjourned the meeting at 10:35 p.m.