

PIEDMONT PLANNING COMMISSION

Regular Meeting Minutes for Monday, December 10, 2012

A Regular Session of the Piedmont Planning Commission was held December 10, 2012, in the City Hall Council Chambers at 120 Vista Avenue. In accordance with Government Code Section 54954.2(a) the agenda for this meeting was posted for public inspection on November 30, 2012.

CALL TO ORDER

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

ROLL CALL

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

Staff: City Planner Kate Black, Assistant Planner Kevin Jackson, Planning Technicians Sylvia Toruno and Jennifer Feeley and Recording Secretary Chris Harbert

City Council Liaison: Councilmember Robert McBain

CONSENT CALENDAR

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

Non-Residential Sign Design Review 1337 Grand Avenue

Resolution 329-DR-12

WHEREAS, Ms. Debra Turner, on behalf of Piedmont Primary Care, is requesting permission to install a non-illuminated wood sign mounted on the wall and a vinyl decal sign on the front entry door, both located on the east-facing side of the building along Grand Avenue (1345 Grand Avenue, Suite 103 -- situs address 1337 Grand Avenue) Piedmont, California, which installation requires non-residential sign 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 project is categorically exempt under the California Environmental Quality Act, pursuant to Section 15301, Class 1(e) and the proposal conforms with the criteria and standards of Section 17.19.2 of the Piedmont City Code:

1. A maximum of one sign not required by law is permitted on the fact of the building, unless the Planning Commission determines that one or more additional signs are needed for the convenience of the public. This property currently has one sign (each approximately 16 sq. ft. to 18 sq. ft.) for each office suite. (One sign for each tenant). The proposed wooden sign replaces an existing sign. Secondary signage is the name and phone number on the door and does not replace any existing signage.
2. Each sign, including a sign required by law, shall be simple in design. Graphic depictions related to the non-residential use are appropriate. The design is simply the name of the business in white letters and their orange sunburst symbol, on a brown field. Secondary information (door only) is the phone number.

3. Each sign, including a sign required by law, shall be compatible in design, color and scale to the front of the building, adjoining structures and general surroundings. The other signs on the property are approximately the same size (about 58"x 41") and thickness (each one is slightly different) and mounted in the same approximate location next to each suite entrance. The other tenant signs are sandblasted wood, and so is the proposed sign. The property is too far away from other business signs to visually relate to them.

4. A sign shall be oriented toward pedestrian and vehicular traffic. The proposed signage is parallel to Grand Avenue. It is elevated (as are the other signs on the property) to be visible to pedestrian and vehicle occupants. The small graphics on the door face the street but are probably not easily seen from that distance.

5. The sign is proposed to be constructed of sturdy materials. The wood sign is pest (insect) resistant. The sandblasting process enhances the beauty of the natural wood grain texture while making the sign more weather resistant. When properly built and maintained, sandblasted wood signs can last upwards of 25 years. The vinyl graphics on the door are warranted for 10 years against fading.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review application of Ms. Turner for construction at 1337 Grand Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City.

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

Moved by Henn, Seconded by Kellogg

Ayes: Chase, Henn, Kellogg, Robertson, Zhang

Noes: None

Absent: None

PUBLIC FORUM

There were no speakers for the public forum.

APPROVAL OF MINUTES

Resolution 18-PL-12

RESOLVED, that the Planning Commission approves as submitted its meeting minutes of November 13, 2012.

Moved by Zhang, Seconded by Henn

Ayes: Chase, Henn, Kellogg, Zhang

Noes: None

Abstain: Robertson

Absent: None

REGULAR CALENDAR

The Commission considered the following items of regular business:

**Fence Design Review
390 Hampton Road**

Mr. and Mrs. Michael Panico are requesting fence design review to construct new walls and columns with an entry gate along the sidewalk at the front (north) of the house and construct a new driveway gate at the rear (east) of the residence.

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

Neither the applicant nor his representative was present to discuss the application. There was no **public testimony**.

The Commission supported application approval, although acknowledging that its review was complicated by the inconsistency and inaccuracy of the submitted drawings. In the future, the Commission requested that staff require better prepared drawings before forwarding the plans for Commission consideration. As to project details, the Commission supported an encroachment permit for the pedestrian gate piers, noting that these piers are essentially decorative in nature and function and the new pedestrian gate replaces an existing gate. As to the driveway gate, the Commission emphasized that the submitted plans failed to depict the driveway's cross-slope and thus clarify how gate closure will address this difference in grade. However, the Commission felt that project conditions could satisfactorily address this deficiency. The Commission also requested that the electronically-operated driveway gates not swing over the sidewalk when opening. The City Planner clarified that the Building Official will not permit the gates to swing over the sidewalk. As to the overall design, the Commission agreed that the scale, materials and quality of the improvements were consistent with the architectural style of the residence and enhanced the aesthetics of the property.

Resolution 326-DR-12

WHEREAS, Mr. and Mrs. Michael Panico are requesting permission to construct new walls and columns with an entry gate along the sidewalk at the front (north) of the house and construct a new driveway gate at the rear (east) of the residence located at 390 Hampton Road, Piedmont, California, which construction requires design review; and

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

1. The exterior design elements are aesthetically pleasing as a whole and harmonious with existing and proposed neighborhood development in terms of architectural style and detailing.
2. The design is appropriate, considering its effect on neighboring properties' existing views, privacy and access to direct and indirect light because the proposed improvements will not block neighbor view, intrude upon neighbor privacy or block access to the public street and

sidewalk. The proposed improvements are similar in many ways to other entry gates and walls in the neighborhood.

3. The safety of residents, pedestrians, and vehicle occupants and the free flow of vehicular traffic are not adversely affected, considering the circulation pattern, parking layout and points of ingress and egress because the positioning of the new gates at the sidewalk will be set back further from the sidewalk than existing gates. Thus creating an enhanced visual setting for the pedestrian entrance to the property as well as increased pedestrian safety. The new driveway gates will be mounted on existing stucco piers in such a position that when the gates swing open, they will not overhang the sidewalk on Hampton Road.

4. The project complies with Design Review Guidelines V-1, V-2, V-3, V-5, V-5(a) & (b), V-6, V-9 and V-10.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review application of Mr. and Mrs. Panico for construction at 390 Hampton Road, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

1. **Defense of Legal Challenges.** If there is a third party administrative, legal or equitable action challenging the project approvals, including CEQA issues, the Property Owner shall defend and indemnify the City against any liability, fees and costs arising out of the defense, including the costs of City's own counsel. If such an action is filed, the Property Owner and City shall then enter into an agreement regarding selection of counsel and other provisions related to the defense. For this purpose, "City" includes the City and its elected and appointed officials, agents, officers and employees.
2. **Encroachment Permit.** Before the issuance of a building permit, the Property Owner shall apply for an encroachment permit to allow for the construction within the public right-of-way or public easement.
3. **Driveway Gates.** The driveway gates shall be located so that when they swing open toward the street, the gates do not overhang the sidewalk when fully open nor impede sight lines of on-coming traffic. The gates shall be constructed so that the bottom rail is parallel with the cross-slope of the driveway at the point of closure. The maximum height of the gate, when closed, shall be 5 ft. measured from the north column. Said design modifications shall be subject to staff review and approval to insure an appropriate degree of similarity in style and quality with the proposed gate.

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

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

Moved by Kellogg, Seconded by Henn

Ayes: Chase, Henn, Kellogg, Robertson, Zhang

Noes: None

Absent: None

**Variance, Design
Review & Fence
Design Review
471 Mountain Avenue**

Mr. Rui De Figueredo is requesting variance, design review and fence design review for retroactive approval of various improvements located in the front yard, including: new (right) side yard stairs, an enclosed storage/garbage structure, and modifications to a previously approved side yard gate. The requested variances are from: (1) Section 17.10.4 to allow a structure coverage of 48.3% in lieu of the code permitted maximum of 40%; (2) Section 17.10.6 to allow the side yard stairs to extend to the front property line in lieu of the code required minimum of a 20 ft. front yard setback; and (3) Section 17.10.7 to allow the new stairs to extend to the right side property line in lieu of the code required minimum of a 4 ft. side yard setback. A previous application for front yard fence replacement, entry arbor and gate was approved by the Commission in 2010.

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

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

Public testimony was received from:

Maxwell Beaumont, Project Architect, and Rui De Figueredo noted the difficult site constraints due to the lot's steep topography, stated that the stairs were rebuilt so as to comply with building code requirements as well as improve pedestrian access/safety to the home's utility meters and the trash enclosure is the only logical and convenient place to store trash and recycling receptacles.

The Commission acknowledged the difficult site conditions of the property in voicing support for variance justification to rebuild the side stairs. However, the Commission debated at length whether the proposed design, size and location of the trash enclosure was acceptable. During discussion of alternative site locations for the trash enclosure, the applicant and Mr. Beaumont stressed that cantilevering the trash enclosure off of the driveway bridge or pulling back the enclosure from the edge of the sidewalk would involve significant structural difficulties and create unattractive aesthetic impacts. In the end, the Commission, with the exception of Commissioner Robertson, supported leaving the trash enclosure as constructed, provided a lid was added to the top and sliding, rather than swinging, access gates were installed so that the doors did not open onto the sidewalk and would remain closed when not in use. It was felt that these modifications would create a more "fence-like" visual appearance from the street and sidewalk. The Commission also requested that precautions be taken to

insure that the wheeled trash receptacles cannot roll out of the enclosure. Commissioner Robertson preferred that the trash enclosure be reduced in size to approximately 6'x5' rather than the existing 15'10" to make the structure less "tacked on" in appearance and create less visual blockage of an existing tree. The Commission majority supported retaining the size as is, agreeing that the proposed modifications to the access gates and inclusion of a lid cover, coupled with the vegetation planters will help soften the structure's visual presence at the sidewalk.

Resolution 327-V/DR-12

WHEREAS, Mr. Rui De Figueredo is requesting retroactive approval for various improvements in the front yard, including: new (right) side yard stairs, an enclosed storage/garbage structure, and modifications to a previously approved side yard gate located at 471 Mountain Avenue, Piedmont, California, which construction requires variance and design review; and

WHEREAS, variances from the requirements of Chapter 17 of the Piedmont City Code are necessary in order to exceed the allowable structure coverage and construct in the front and side yard setbacks; 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, downsloping topography of the lot and the fact that (i) any access from the yard to the street requires stairs; (ii) the property currently exceeds allowable structure coverage and any improvement thereto requires variance; and (iii) the property's trash receptacles have to be located within the front yard to enable access to these receptacles by trash collection service providers. 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 variances are compatible with the immediately surrounding neighborhood and the public welfare because, as conditioned, the proposed improvements are architecturally integrated into the existing, approved front yard fence design previously approved by the Commission.
4. Accomplishing the improvement without variance would cause unreasonable hardship in planning, design, or construction because of the steep topography of the lot and the fact that the existing house already exceeds allowable structure coverage.
5. The project conforms with the criteria and standards of Section 17.20.9 of the Piedmont City Code.

6. The exterior design elements are aesthetically pleasing as a whole and harmonious with existing and proposed neighborhood development in that the proposed improvements are integrated into the existing, previously approved architectural design of the front yard fence and entry trellis in terms of materials, detailing and colors.

7. The design is appropriate, considering its effect on neighboring properties' existing views, privacy and access to direct and indirect light because there is no material impact. The new, code-compliant stairs slope downward to meet existing grade and are architecturally integrated into the approved fence design. The trash enclosure is also integrated into the previously approved fence design and is appropriate in terms of architectural style and usability of existing structural conditions and limitations that are in effect because of the design and construction of the driveway bridge leading to the garage.

8. As conditioned, 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.

9. The project complies with Design Review Guidelines II-1, II-2, II-3(a) through (d), II-8 and V-6.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the variance and design review application of Mr. De Figueredo for construction at 471 Mountain Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

1. **Approved Plans.** The approved plans are those submitted on November 29, 2012, after neighbors were notified of the project and the plans were available for public review;
2. **Defense of Legal Challenges.** If there is a third party administrative, legal or equitable action challenging the project approvals, including CEQA issues, the Property Owner shall defend and indemnify the City against any liability, fees and costs arising out of the defense, including the costs of City's own counsel. If such an action is filed, the Property Owner and City shall then enter into an agreement regarding selection of counsel and other provisions related to the defense. For this purpose, "City" includes the City and its elected and appointed officials, agents, officers and employees.
3. **Trash Enclosure.** The design of the trash enclosure shall be modified so that its entry gates are "sliders" rather than swingers to insure that these access gates do not intrude over the sidewalk when open. In addition, a cover lid shall be constructed over the enclosure in a style, detailing and material matching that of the existing fence and adjoining planter box/mail box structure. Said design modification shall be subject to staff review and approval, with the understanding

that the modified design shall be synchronized with the style and detailing of the existing fence and the sliding gate that will be installed at the access to the north stairs.

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

Moved by Kellogg, Seconded by Henn

Ayes: Henn, Kellogg, Zhang, Ode

Noes: Robertson (No vote pertains to trash enclosure design only)

Recused: Chase

Absent: None

The Commission recessed for dinner at 6:35 p.m. and reconvened at 7:00 p.m.

**Variance, Design
Review & Fence
Design Review
50 Woodland Way**

Mr. Andrew Faust and Ms. Susan Briggs are requesting variance, design review and fence design review to demolish the existing 2-car garage and construct a new 3-car garage with 640 sq. ft. of habitable square footage above. The new 2-story garage structure is proposed to be moved slightly back from the front property line from the current garage location and other modifications are proposed to the driveway, windows and doors, exterior lighting and fencing. The requested variances are from: (1) Section 17.10.6 to allow the eaves of the new garage to extend to within 16'8" of the front property line in lieu of the code required minimum of a 20 ft. front yard setback; and (2) Section 17.10.7 to allow the eaves of the new garage to extend to within 2 ft. of the right side property line in lieu of the code required minimum of a 4 ft. side yard setback.

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

Public testimony was received from:

Andrew Faust, Owner and Project Architect, described his proposed improvements to increase front bedroom privacy as well as provide additional off-street parking and more habitable space.

The Commission supported application approval, agreeing that variance approval is justified, citing in particular (i) the desirability of preserving architectural integrity through consistent eave lines; (ii) the design of the new garage is consistent in style and size with other 2-story structures in the neighborhood as well as with the architectural character of the existing home; (iii) the proposed improvements will have minimal impact on adjacent neighbors because of significant separation distances and extensive landscaping screening; and (iv) the project reflects a clever and creative solution for adding parking on a

lot with narrow street frontage. However, the Commission did prefer that the height of the front yard fence be lowered to a maximum of 4 ft. (this 4 ft. height would apply only to the fence itself, not the combination of the fence and the 2'6" retaining wall upon which it is located). The Commission agreed that the degree of bedroom privacy screening intended by this fence could be supplemented through landscaping. The Commission encouraged the applicant to consider pulling the fence back from the retaining wall to create a planting strip area. The Commission also noted its preference that the driveway surface not be asphalt or plain concrete; this was agreeable to Mr. Faust.

Resolution 330-V/DR-12

WHEREAS, Mr. Andrew Faust and Ms. Susan Briggs are requesting permission to demolish the existing 2-car garage and construct a new 3-car garage with 640 sq. ft. of habitable square footage above. The new 2-story garage structure is proposed to be moved slightly back from the front property line from the current garage location and other modifications are proposed to the driveway, windows and doors, exterior lighting and fencing located at 50 Woodland Way, Piedmont, California, which construction requires variance and design review; and

WHEREAS, variances from the requirements of Chapter 17 of the Piedmont City Code are necessary in order to construct within the front (northwest) and right side (southwest) setbacks; 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 unusual shape of the lot and the fact that the home's existing garage eave lines encroach into the setback and maintaining a consistent eave line on the new construction is desirable for architectural integrity and aesthetic reasons. 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 variances are compatible with the immediately surrounding neighborhood and the public welfare because the proposed setback of the new garage from the street is actually greater than the existing condition. There are numerous other 2 plus story structures in the immediate neighborhood that are higher than the proposed improvements and the roof of the new garage is as flat and low as can be constructed.
4. Accomplishing the improvement without variance would cause unreasonable hardship in planning, design, or construction because there is no other place on the property to construct a 3rd conforming

parking space that is required because of the addition of a room eligible for use as a bedroom.

5. The proposal conforms with the criteria and standards of Section 17.20.9 of the Piedmont City Code:

6. The exterior design elements are aesthetically pleasing as a whole and harmonious with existing and proposed neighborhood development. The distance between the new garage with habitable space above is reasonable and appropriate due to the existing topography and neighborhood development pattern. Upper level setbacks greater than the setbacks required for the lower level have been considered and are not necessary to reduce losses of ambient and reflected light. Only the roof eave is extending into the setback and the new garage is much lower in height than structures on adjacent properties.

7. The proposed new multi-level structure has been designed in a way that reasonably minimizes view and light impacts on neighboring properties. The proposed garage has been lowered with the lowest roof possible. The new construction is tightly integrated into the existing structure.

8. The size and height of the new garage and habitable space 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. Structures on neighboring properties are much taller.

9. The safety of residents, pedestrians, and vehicle occupants and the free flow of vehicular traffic are not adversely affected, considering the circulation pattern, parking layout and points of ingress and egress. The property's off-street parking situation will be improved because there will be the addition of a third conforming garage parking space. The new garage will be set back further from the street than the existing condition, thus making entering and exiting this new garage safer and more convenient.

10. The project complies with Design Review Guidelines I-1, I-1(a) & (b), I-2, I-2(a) & (b), I-5, I-5(b), I-6, I-7, I-12, III-1, III-1(a), III-2, III-2(a), III-3, III-4, III-5, III-6, III-6(a), III-7, III-7(a), V-1, V-2, V-3, V-4, V-5, V-5(a) through (c), V-6 and V-9.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review application of Mr. Faust and Ms. Briggs for construction at 50 Woodland 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 Building;
 - 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.

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. 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.

7. Approved Plan Set. The approved plans are those submitted on November 9, 2012, with modifications submitted November 19 and 28, 2012, after neighbors were notified of the project and the plans were available for public review;

8. Fire Suppression. Pursuant to the 2010 California Residential Code Section R 313.2, all new structures shall be equipped with an automatic fire system in accordance with CRC Section R 313.3 or NFPA 13D.

9. Green Building. All new structures shall comply with the 2010 California Green Building Standards Code Chapter 4, Residential Mandatory Measures.

10. Fence Height. The front fence height shall not exceed 4 ft. above the proposed retaining wall. Said design modification shall be subject to staff review and approval.

11. Driveway. The driveway surface material shall not be plain concrete or asphalt but a material more suitable for the home's existing aesthetics.

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: None

**New House Variance
and Design Review
419 Hillside Court**

Ms. Wendi Lelke-Wallway is requesting variance and design review for a New House, seeking to demolish the existing 1,391 sq. ft. house and detached garage and construct a new 2-story house with attached garage and a detached 2-story accessory structure. Together, the new house and accessory structure are proposed to have 4,357 sq. ft. of habitable space that includes 4 bedrooms, 2 full bathrooms, 3 half bathrooms, a living-dining-kitchen-family great room, laundry room, office, media room and gymnasium. Proposed exterior features include windows and doors throughout, skylights, exterior lighting, porch and driveway structures, trellis awnings, rear decks, fencing changes, and hardscape and landscape modifications. The requested variance are from: (1) Section 17.10.6 to allow the new driveway bridge structure to extend to within 1'6" of the front property line in lieu of the code required minimum of a 20 ft. front yard setback; (2) Section 17.10.7 to allow the north side yard patio to extend to within 6 in. and the new driveway bridge structure to within 1'6" of the north side property line in lieu of the code required minimum of a 4 ft. side yard setback; and (3) Section 17.10.7 to allow the new driveway bridge structure to extend to within 1'6" of the east side property line in lieu of the code required minimum of a 4 ft. side yard setback.

Previous New House applications were denied, with prejudice, by the Commission on June 11 and September 10, 2012.

It was noted that the floor plan of the proposed accessory structure includes a 683 sq. ft. second unit which under State law and Section 17.40 of the City Code is not subject to review by the Planning Commission and is being ministerially processed by staff under a separate application #12-0098.

Written notice was provided to neighbors. **Three negative response forms** were received. **Correspondence** was received from Rick Fehr; John Randolph; Rick Fehr & Susan Varner;

Public testimony was received from:

Justin Wallway summarized the design changes made to the proposed new home in response to the September meeting as well as additional consultation with neighbors. He felt that the new design mitigated neighbor and Commission concerns over mass, privacy and view impacts.

Jorge Maezono, Project Architect, also described the major design features and layout of the revised submittal.

The Commission agreed that the revised design was responsive to Commission requests, reflected an attractive Arts & Crafts architecture and had an improved articulation of massing and roof design, was more

compatible with the lot's topography and successfully mitigated impacts on the privacy and views of neighboring properties. The Commission discussed at length the option of lowering the overall house another 18 inches to further reduce building height and mass. In the end, it was agreed that such a lowering would not significantly affect or benefit neighboring properties but could have the potential of aggravating drainage/water run-off problems for the home. However, the Commission requested that the size of the patio/landing adjacent to the Randolph property be reduced to the minimum required by the building code and the fence height at this location be lowered to a maximum of 6 ft. as measured from the Randolph property grade to minimize impact on the Randolph property. In addition, the Commission requested that the project's finalized landscaping plan provide for the planting of a non-deciduous tree screen along the west side property line to create a visual buffer between the properties. The box size (24 or 36 in.) and number of trees would be per the mutual agreement of the applicant and his neighbor or if such an agreement cannot be reached, at staff's direction.

Resolution 332-V/DR-12

WHEREAS, Ms. Wendi Lelke-Wallway is requesting permission for a New House, seeking to demolish the existing 1,391 sq. ft. house and detached garage and construct a new 2-story house with attached garage and a detached 2-story accessory structure. Together, the new house and accessory structure are proposed to have 4,357 sq. ft. of habitable space that includes 4 bedrooms, 2 full bathrooms, 3 half bathrooms, a living-dining-kitchen-family great room, laundry room, office, media room and gymnasium. Proposed exterior features include windows and doors throughout, skylights, exterior lighting, porch and driveway structures, trellis awnings, rear decks, fencing changes, and hardscape and landscape modifications located at 419 Hillside Court, Piedmont, California, which construction requires variance and design review; and

WHEREAS, variances from the requirements of Chapter 17 of the Piedmont City Code are necessary in order to construct within the front, east and north side yard setbacks; 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 very small front yard available, the fairly difficult physical access to the property and the moderately steep downslope of the lot limits the areas available on the property for construction. 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 variances are compatible with the immediately surrounding neighborhood and the public welfare because the new construction is located as close to the east property line as possible to minimize neighbor impacts. The proposed new home has been carefully sited to minimize neighbor impacts as well as reduce the amount of setback encroachment required for construction.
4. Accomplishing the improvement without variance would cause unreasonable hardship in planning, design, or construction because it would not be practical to provide safe vehicle access to the required parking spaces without variance. The underlying gradient of the lot in the front yard area is too steep.
5. The proposal conforms with the criteria and standards of Section 17.20.9 of the Piedmont City Code.
6. The exterior design elements are aesthetically pleasing as a whole and harmonious with existing and proposed neighborhood development. The distance between the new house and accessory 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 not necessary to reduce losses of ambient and reflected light.
7. The proposed new house and accessory structures have been designed in a way that reasonably minimizes view and light impacts on neighboring properties. The building site is distant from neighboring structures and thus minimizes impacts of view and light as seen from adjacent properties.
8. The size and height of the new house and accessory structure 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 lot is the largest in the immediate neighborhood and the proposed new structures do not exceed the size and bulk limitations of the City's Zoning Ordinance.
9. The safety of residents, pedestrians, and vehicle occupants and the free flow of vehicular traffic are not adversely affected, considering the circulation pattern, parking layout and points of ingress and egress. In accordance with Sections 17.16.1 and 17.22.1, the proposed on-site parking is appropriate to the size of the new house and accessory structure and additional parking is not required to prevent unreasonable short and/or long term parking impacts on the neighborhood. The requirements of the Zoning Ordinance are being met. Additionally, the front driveway bridge can handle additional guest parking.
10. The project complies with Design Review Guidelines I-1, I-1(b) & (d), I-2, I-2(c) & (d), I-3, I-10, I-11, III-1, III-1(a), III-2, III-3, III-4, IV-1(b), IV-2, IV-3(a), V-1, V-2, V-3, V-4, V-7 and V-9.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review application of Ms. Lelke-Wallway for construction at 419 Hillside

Court, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

1. **Property Line Location.** A licensed land surveyor will be required by the Building Department to verify and mark the location of the north, east and south property lines at the time of foundation and/or frame inspection to verify the approved setback dimension measured to the new construction.
2. **Window and Door Divided Light Grilles.** Where any windows or doors are proposed to have divided light grilles, those grilles shall be either true or 3-dimensional simulated grilles.
3. **Garage Doors.** The garage doors shall be wood and electronically operated.
4. **Exterior Light Fixtures.** Exterior light fixtures shall be downward directed with a translucent or opaque shade that completely covers the light bulb.
5. **Demolition and Construction Management Plan.** The Property Owner shall develop a comprehensive Demolition and Construction Management Plan. The Demolition and Construction Management Plan shall address noise, vibrations, traffic control, parking, debris removal, dust control, sanitary facilities, construction fencing 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 Demolition and Construction Management Plan as deemed necessary throughout the course of the Project and until the Final Inspection.
 - a. Stormwater Design. Because this Project anticipates the addition or replacement a significant area of impervious surface, the Property Owner shall prepare a stormwater management plan prior to obtaining a building permit. As required by the City's Municipal Regional Stormwater NPDES Permit and to the extent practicable, the plan shall incorporate site design practices and measures to promote infiltration of stormwater during and after construction, and reduce the amount of impervious surface on the site as outlined in the following documents: The Bay Area Stormwater Management Agencies Association's (BASMAA) "Start at the Source" design guidance manual, which is available in PDF format at www.cleanwaterprogram.org/businesses_developers.htm; BASMAA's "Permanent Post-Construction Stormwater BMP Fact Sheets;" or the State of California Best Management Practices Handbooks.
6. **Environmental Hazards.** Prior to the issuance of a building permit as required by the Chief Building Official, the applicant shall provide a plan, including necessary testing, to verify compliance with all local, state and federal regulations regarding the disturbance and removal of hazardous materials (if any) on residential properties and/or in the proximity of schools, including lead-based paint and asbestos. Said plan for the proper removal and handling of hazardous materials shall be provided on the appropriate sheets of the construction plan sets

and included in the Construction Management Plan.

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

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

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

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

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

8. **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.

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.

a. Peer Review. The City, at the Property Owner's sole expense, shall retain an independent geotechnical consultant to perform a peer-review of the Property Owner's geotechnical report and advise the City in connection with the Property Owner's proposals. The City Engineer shall select this independent geotechnical consultant, whose services shall be provided for the sole benefit of the City and whose reports and recommendations can be relied upon only by the City. The independent geotechnical consultant shall also review the 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.

10. Sound and Vibration Mitigation Plan and Review. As required by the Director of Public Works, the Property Owner shall submit a plan prepared by a licensed engineer of the Property Owner's choice that fully assesses the existing site conditions for the mitigation and monitoring of vibration and decibel levels at the Project during construction (including being periodically present at the construction site during excavation and foundation work). If, in the Engineer's sole discretion, such monitoring indicates that the sound or vibration levels exceed those anticipated in the Property Owner's Construction Management Plan and/or the Sound and Vibration Mitigation Plan, all work on the Project may be immediately stopped by the City and may not resume until the City Engineer is fully assured that the sound and vibration transmissions generated by work on the Project can be maintained at or below a reasonable level and duration.

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

submittal.

11. **Consultant Cost Recovery.** In order to accommodate the scope and nature of the Project proposed by the Property Owner, if the Director of Public Works deems it necessary to retain independent consultants with specialized expertise, including the City Engineer, the Property Owner shall make a cash deposit with the City at the time of the Building Permit Application in the amount of \$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 consultant assistance. If the cash deposit has been reduced to \$2,500 or less at any time, the Director of Public Works may require the Property Owner to deposit additional funds to cover any further estimated fees and expenses associated with consultants retained by the City on a regular basis or specifically for the Property Owner's Project. Any unexpended amounts shall be refunded to the Property Owner within 90 days after the Project has an approved Final Inspection by the Chief Building Official.

12. **Double Trailer Truck Prohibition.** To reduce potential damage to the streets and to avoid traffic hazards on narrow curving city streets, no double trailers shall be used as part of the Project.

13. **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.

14. **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 \$25,000, 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.

15. 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 \$25,000 to ensure that the Project site is not left in a dangerous or unfinished state.

a. The Site Safety Security shall be in an amount to include three components:

i. safety, which means the cost to make the site and structure safe if construction should cease mid-way through the Project;

ii. aesthetics, which means an amount to install and maintain landscaping all around the Project to protect the immediate local views from neighbors and public property; and

iii. staff and consultant time to evaluate and implement this condition.

If, as the Project proceeds, the expected cost of these components increases beyond the original estimate in the opinion of the Director of 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.

16. **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.

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

18. **Landscaping Plan.** Before issuance of a building permit, the Property Owner shall submit for Staff Design Review a Final Landscape Plan that shows trees proposed for retention as well as in-lieu trees required by a Certified Tree Preservation Plan. Non-deciduous trees shall be planted along the west side of the property. The final plan shall comply with Municipal Code Section 17.17.3, and shall not propose plants near the driveway that could obscure visibility of pedestrians or vehicles on the street from drivers backing out of the driveway. Said plan shall also minimize adverse impacts on the views and privacy of adjacent properties.

19. **Arborist's Report.** Before the issuance of a building permit, the Property Owner shall submit an Arborist's Report that includes tree preservation measures to preserve existing trees within 20 feet of the proposed structure that are proposed to remain on-site, as well as any nearby off-site trees. The tree preservation measures shall be on the appropriate sheets of the construction plans.

20. **Certified Tree Preservation Plan.** Before the issuance of a building permit, the Property Owner shall prepare for review and approval by staff a Tree Preservation Plan that incorporates the tree preservation measures recommended in the above required Arborist's Report. The tree preservation measures shall be on the appropriate sheets of the construction plans. The arborist shall be on-site during critical construction activities, including initial and final grading, to ensure the protection of the existing trees. 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.

a. Trees proposed for removal shall have an in-lieu replacement tree planted elsewhere on the property, which shall be shown on the final landscape plan. Replacement tree size is subject to staff review, and shall be commensurate with the size and numbers of trees to be removed. They shall generally be a minimum of 24" box size.

b. 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.

21. **C&D Compliance.** Compliance with Chapter 9 Article III of the Municipal Code, which governs the recycling of construction and demolition debris, will be required on all permits issued on or after February 1, 2007.

22. **Encroachment Permit.** Before the issuance of a building permit, the Property Owner shall apply for an encroachment permit to allow for any construction within the public street right-of-way, the City's sanitary sewer easement, and/or the City's storm sewer easement.

23. **Sewer Main Condition and Repair.** City records indicate that a City sewer main, storm sewer and associated easement(s) may be located near the proposed construction proximate to the property lines. Prior to the issuance of a building permit, the Property Owner shall submit a revised copy of the survey prepared by Moran Engineering to show sanitary and storm sewer manhole covers and any easements. Said easements and manhole covers shall also be shown on the building permit drawings. The applicant shall also work with City staff to verify the location and depth of the sanitary and storm sewer mains. In addition, the City shall videotape the existing sanitary and storm sewer mains to assess their pre-construction condition in order to make a determination as to whether any repairs to or replacement of the sewer main(s) is required prior to the commencement of excavation and/or construction. (The City is responsible for the cost of the main line, and the property owner for costs of the lateral.) As part of the final inspection the same sanitary and storm sewer lines shall be inspected as required by the Director of Public Works, who shall also determine if the sanitary and storm sewer lines were damaged as a result of the construction and therefore must be repaired at the applicant's expense. The applicant is responsible to locate their private sewer lateral and note such location on the building permit drawings.

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

the Project.

25. 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.

26. North Side Landing and Fence. The proposed walkway and landing on the north side of the property shall be reduced in size to the minimum required by the Building Code (3 ft.). The maximum height of the fence in this area shall be 6 ft. as measured from the Randolph side of the property (high side) and then taper down as shown on Drawing A-17.

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

Moved by Henn, Seconded by Zhang

Ayes: Chase, Henn, Kellogg, Robertson, Zhang

Noes: None

Absent: None

ADJOURNMENT

There being no further business, Chairman Chase adjourned the meeting at 9:05 p.m.