

## PIEDMONT PLANNING COMMISSION

### Regular Meeting Minutes for Monday, June 10, 2013

A Regular Session of the Piedmont Planning Commission was held June 10, 2013, 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 May 24, 2013.

#### CALL TO ORDER

Chairman Zhang called the meeting to order at 5:00 p.m. He announced that Agenda Item #11 (Variance/Design Review, 27 York) has been withdrawn from tonight's consideration at the applicant's request.

#### ROLL CALL

Present: Commissioners David Hobstetter, Susan Ode, Tony Theophilos, Tom Zhang and Alternate Commissioner Louise Simpson

Absent: Commissioner Phillip Chase (excused)

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

City Council Liaison: Councilmember Garrett Keating

#### CONSENT CALENDAR

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

##### **Non-Residential Sign Design Review 344 Highland Avenue**

##### **Resolution 112-DR-13**

WHEREAS, the Applicant is requesting permission to replace the existing externally illuminated monument sign with a new externally illuminated aluminum face monument sign; replace the existing wall-mounted aluminum plate letters with new non-illuminated wall-mounted reverse channel letters; replace two panels found on the existing tenant directory and community bulletin board with new non-illuminated aluminum and vinyl panels; and replace four existing automated teller machines (ATM) canopy sign faces with new non-illuminated polycarbonate and vinyl sign faces located at 344 Highland 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 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 face of the building, unless the Planning Commission determines that one or more additional signs are needed for the convenience of the public. One sign is proposed on the face of the building to replace an existing sign.
2. Each sign, including a sign required by law, is simple in design. Graphic depictions related to the non-residential use are appropriate. The proposed signs contain the Wells Fargo name and corporate brand colors only.
3. Each sign, including a sign required by law, are compatible in design, color and scale to the front of the building, adjoining structures and general

surroundings. The proposed signs do not cover any architectural features on the building.

4. The proposed signs are oriented to pedestrian and vehicle traffic in the same way as the existing signs.

5. The signs are constructed of high quality aluminum and acrylic.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the non-residential sign design review application for construction at 344 Highland Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City.

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

**Design Review  
218 Palm Drive**

**Resolution 141-DR-13**

WHEREAS, the Property Owner is requesting permission to construct a 2-story rear addition to the house that adds 304 sq. ft. of living area; make window, door, skylight and exterior lighting modifications throughout the residence; make various changes to the interior; and construct site improvements in the rear yard, including a new patio terrace, retaining walls, on-grade stairs and vegetation located at 218 Palm 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 project is categorically exempt under the California Environmental Quality Act, pursuant to Section 15301, Class 1(e) and the proposal conforms with the criteria and standards of Section 17.20.9 of the Piedmont City Code:

1. The exterior design elements are aesthetically pleasing as a whole and harmonious with existing and proposed neighborhood development. The distance between the proposed upper level addition/expansion and adjacent residences is reasonable and appropriate due to the existing topography and neighborhood development pattern. Upper level setbacks greater than the setbacks required for the lower level have been considered and are not necessary to reduce losses of ambient and reflected light because adequate separation distance keeps the new structure from reducing any ambient or reflected light. The new design successfully extends the roof design to simulate existing massing and architecture.

2. The proposed upper level rear addition has been designed in a way that reasonably minimizes view and light impacts on neighboring properties because it maintains a 6 ft. setback and includes no windows so as to maintain privacy.

The retaining walls are in compliance with the code and impose no impact on neighboring property in terms of view.

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 original small house is not being greatly expanded so it creates minimal increased impact.
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 change in existing circulation patterns and the retaining walls do not obstruct vehicle sight lines.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review application for construction at 218 Palm Drive, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

1. **Approved Plan Set.** The approved plans are those submitted on May 23 and 29, 2013, after notices to neighbors were mailed and the application was available for public review.

2. **Railing or Vegetative Barrier.** As required by the Chief Building Official, the applicant shall provide an appropriate safety barrier at the top of the new rear retaining walls, subject to staff review and approval.

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, site safety security and other potential construction impacts, as well as other details involving the means and methods of completing the Project, including the construction route. The City Building Official has the authority to require modifications and amendments to the Construction Management Plan as deemed necessary throughout the course of the Project and until the Final Inspection.

- a. Construction Site Control of Stormwater. The California Regional Water Quality Control Board requires all projects that disturb the site to comply with Provision C.6 of the San Francisco Bay Regional Stormwater NPDES Permit in order to prevent construction site discharges of pollutants and other regulated materials during construction. As required by the Chief Building Official and prior to the issuance of a building permit, the Applicant shall develop and submit a construction stormwater management plan as part of the Construction Management Plan to achieve timely and effective compliance with Provision C.6. Permit Provision C.6.c.ii provides sources for site specific, and seasonally- and phase-appropriate, effective Best Management Practices (BMPs) that may be incorporated into the stormwater management plan. Copies of the Municipal Regional Stormwater Permit are available from the Piedmont Public Works Department and on-line at [cleanwaterprogram.org](http://cleanwaterprogram.org).

4. **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.

**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 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 an endorsement requiring notice to the City if the insurance is cancelled or changed, and Property Owner shall immediately arrange for substitute insurance coverage. If the Property Owner does not have a general contractor, the Property Owner shall maintain property insurance and coverage for contractors, which is substantially equivalent to the contractor's requirement of this section.

**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. **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.

8. **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.

9. **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.

10. **Property Line Location.** As required by the Chief Building Official, a licensed land surveyor shall verify and mark the location of the northeast (left) property line at the time of foundation and/or frame inspection to verify the approved setback dimension measured to the new construction.

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

12. **Geotechnical Report and Review.** As required by the Chief Building Official, 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.

13. **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.

14. **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.

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 Theophilos, Seconded by Ode

Ayes: Hobstetter, Ode, Theophilos, Zhang, Simpson

Noes: None

Absent: Chase

#### **PUBLIC FORUM**

There were no speakers for the public forum.

#### **APPROVAL OF MINUTES**

##### **Resolution 7-PL-13**

RESOLVED, that the Planning Commission approves as submitted its meeting minutes of May 13, 2013.

Moved by Ode, Seconded by Hobstetter

Ayes: Hobstetter, Ode, Theophilos, Zhang, Simpson

Noes: None

Absent: Chase

**REGULAR CALENDAR**

**Variance and  
Design Review  
213 Ricardo Avenue**

The Commission considered the following items of regular business:

The Property Owner is requesting variance and design review to demolish, rebuild and enlarge the detached garage on the property; modify the size of the driveway; and make modifications to the fence along the south property line. Exterior features of the garage include new windows and doors throughout and new lighting. The requested variance is from Section 17.10.7 to allow the eave of the new garage to extend to within 2 ft. of the left side property line in lieu of the code required minimum of a 4 ft. side yard setback.

Written notice was provided to neighbors. **Six affirmative and one negative response forms** were received. **Correspondence** was received from: Dave & Angie Perez

**Public testimony** was received from:

Jack Backus, Project Architect, described how the proposal was modified to reduce massing and privacy impacts in response to neighbor concerns after the story poles were erected. He stated his client's willingness to install frosted glass in the garage/workshop windows to further mitigate privacy concerns, noting his preference for windows rather than skylights for aesthetic reasons. He also stated that the gable roof design on the structure is also preferred for aesthetic reasons as well as to maximize the structure's storage capacity.

Howard Ervin stated that the proposal is intended to replace the existing dilapidated garage with a new structure with more storage capacity.

David Perez voiced concern that the rear windows on the garage/workshop will intrude upon his privacy as well as create undesirable light spill on his rear patio. He requested that these windows be eliminated and skylights be used to provide natural light to the workshop.

Mercedes Broening requested that the roof at the rear of the garage/workshop be a hip rather than gable so as to reduce the perceived bulk and impact to view from her property and to be more in keeping with other garages in the neighborhood. She also requested permission to grow climbing vines on the applicant's garage wall to soften its visual impact. Mr. Ervin preferred that vegetation not be directly attached to his garage wall and suggested that the neighbor erect a trellis structure on her property to provide the desired landscaping screen.

The Commission supported project approval, requesting that the proposed rear windows either be eliminated or relocated, with frosted glass, to the corners of the garage wall so as to mitigate neighbor privacy concerns. The Commission also preferred that the roof line at the rear of the garage be a single hip to minimize massing and view obstruction impacts on neighboring properties; the proposed gable roof line at the front of the garage could remain for aesthetic reasons. The Commission felt that these concessions were reasonable in exchange for variance approval to minimize the impacts of this variance on adjacent properties, adding its belief that the change from a gable to a hipped roof at the rear of the structure would not significantly impact the storage capacity of the garage. The planting of vegetation to soften the appearance of the structure was a private matter to be worked out between neighbors.

**Resolution 72-V/DR-13**

WHEREAS, the Property Owner is requesting permission to demolish, rebuild and enlarge the detached garage on the property; modify the size of the driveway; and make modifications to the fence along the south property line. Exterior features of the garage include new windows and doors throughout and new lighting located at 213 Ricardo Avenue, Piedmont, California, which construction requires variance and design review; and

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

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

1. The 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 property's non-conforming lot size which restricts the owner's ability to locate a new 2-car garage outside of the setback without impeding garage access. 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 it provides two conforming off-street parking spaces, thus relieving on-street parking congestion.
4. Accomplishing the improvement without a variance would cause unreasonable hardship in planning, design, or construction because without variance, ingress/egress to the new garage is not possible.
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 because as an older home (1927), a detached garage is appropriate and the new garage incorporates architectural details found on the home, including cement plaster walls and multi-light windows with wood surrounds.
7. The design is appropriate, considering its effect on neighboring properties' existing views, privacy and access to direct and indirect light because, as conditioned, the proposal mitigates the concerns of the rear neighbor and the neighbors at 217 Ricardo Avenue.
8. The safety of residents, pedestrians, and vehicle occupants and the free flow of vehicular traffic are not adversely affected, considering the circulation pattern, parking layout and points of ingress and egress because it provides two conforming off-street parking spaces for this property.



9. The project complies with Design Review Guidelines I-1, I-1(a) through (d), I-2, I-2(a) & (d), III-1, III-2, III-2(a), III-3, III-4, III-5, III-5(a), III-6, III-6(a), III-7, III-7(a), V-1, V-2, V-4, V-5, V-5(a), V-7 and V-8.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the variance and design review application for construction at 213 Ricardo Avenue, 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 (benchmark).

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 Performance 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.

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. **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.

5. **Property Line Location.** A licensed land surveyor shall be required by the Building Department to verify and mark the location of the south property line at the time of foundation and/or frame inspection to verify the approved setback dimensions measured to the new construction.

6. **Notice of Non-Habitation.** As required by the Chief Building Official a notice of non-habitation shall be recorded with the Alameda County Recorder's office advising current and future owners that the workshop space at the rear of the garage does not meet the building code regulations for habitation.

7. **Roof Line.** The garage roof line at the rear shall be reconfigured to a single hip design; the front of the garage can retain the proposed gable roof line. Said modification subject to staff review and approval.

8. **Windows.** The proposed windows on the garage/workshop structure shall be either eliminated or relocated, with frosted glass, to the corners of the wall, subject to staff review and approval.

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

Moved by Simpson, Seconded by Theophilos

Ayes: Hobstetter, Ode, Theophilos, Zhang, Simpson

Noes: None

Absent: Chase

**Variance and  
Design Review  
50 Bonita Avenue**

The Property Owner is requesting variance and design review to construct a 244 sq. ft. 1-bedroom addition at the northeast corner of the house with associated new windows, doors and exterior lighting. The requested variances are from: (1) Section 17.10.4 to allow a structure coverage of 42.7% in lieu of the code permitted maximum of 40%; and (2) Section 17.16 to allow a residence with 4 rooms eligible for use as bedrooms with one of the two off-street covered parking spaces measuring 9' by 18'8" in lieu of the code required minimum dimension of 9' by 20'.

Written notice was provided to neighbors. **Eight affirmative response forms** were received. **Correspondence** was received from: James & Janice Meeder

**Public testimony** was received from:

Jamie Saunders stated that the purpose of the project is to create a guest bedroom for his father-in-law who visits frequently.

Fred Karren, Project Architect, described the proposed improvements intended to accommodate the applicant's family needs, noted the inability to create habitable living space in the basement area, explained that a two-story addition to the Ranch-style house would be architecturally inappropriate as well as impose significant impacts on adjacent neighbors, stated that the size of the addition was reduced to the upmost in order to minimize the amount of excessive FAR and that the existing garage accommodates two vehicles, even though one space is slightly less deep than the code required dimension.

Jim Meeder supported project approval provided the height of the Saunder's fence bordering his property be increased to a 7 ft. and additional vegetation be planted along this border area to help screen the addition's windows so as to preserve privacy. He noted that these conditions are acceptable to the Saunders.

The Commission supported application approval, agreeing that the existing garage functions as a 2-car garage and the fence height extension is acceptable since it is mutually agreed upon by both neighbors as a means of preserving privacy.

**Resolution 96-V/DR-13**

WHEREAS, the Property Owner is requesting permission to construct a 244 sq. ft. 1-bedroom addition at the northeast corner of the house with associated new windows, doors and exterior lighting located at 50 Bonita Avenue, Piedmont, California, which construction requires variance and design review; and

WHEREAS, a variance from the requirements of Chapter 17 of the Piedmont City Code is necessary in order to exceed the structure coverage limit and to increase the number of bedrooms from 3 to 4 without supplying conforming parking; and

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

1. The 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 upslope nature of the lot, the location of the existing mid-century modern residence on this unusual lot, the unfeasibility of lower level expansion of this residence and the finding that any other expansion solution would more significantly impact adjacent neighbors. 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 neighborhood consists of large 2-story 4 to 5 bedroom homes and the addition of a 4th bedroom to the existing residence is consistent within this neighborhood context.
4. Accomplishing the improvement without variance would cause unreasonable hardship in planning, design, or construction because it would not permit a compatible expansion of this home.
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. These elements include, but not limited to: maintaining hip roofs, consistent slopes, shingled with the style of the building and the exterior finishes of the windows and doors are consistent with the existing house.
7. The design is appropriate, considering its effect on neighboring properties' existing views, privacy and access to direct and indirect light because the proposal has been sensitively designed to minimize impact on adjacent neighbors in terms of windows placement, size and location to enhance privacy. The proposed agreement to increase the height of the existing fence on 50 Bonita is a condition of project approval.
8. 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 existing garage accommodates the parking of two vehicles.
9. The project complies with Design Review Guidelines II-1, II-2, II-3(a) through (d), II-6, II-6(a) through (c), II-7 and II-7(a).

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review application for construction at 50 Bonita Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

1. **Approved Plan Set.** The approved plans are those submitted on May 13, 2013, with modifications submitted on May 28, 2013, after notices to neighbors were mailed and the application was available for public review.

2. **Contractor's General Liability Insurance.** To ensure that the contractor doing work in the City will be responsible for damages caused by the work to City property or to neighboring property, the Property Owner shall require all contractors performing work on the Project to maintain General Liability Insurance for protection from claims for damages because of bodily injury, including death, and claims for damages, other than to the contractor's work itself, to property which may arise out of or result from the contractor's operations. Such insurance shall be written for not less than \$1,000,000 per occurrence. The insurance shall include an endorsement requiring notice to the City if the insurance is cancelled or changed, and Property Owner shall immediately arrange for substitute insurance coverage. If the Property Owner does not have a general contractor, the Property Owner shall maintain property insurance and coverage for contractors, which is substantially equivalent to the contractor's requirement of this section.

3. **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.

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. **Property Line Location.** A licensed land surveyor shall be required by the Building Department to verify and mark the location of the north and east property lines at the time of foundation and/or frame inspection to verify the approved setback dimensions measured to the new construction.

7. **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. Construction Site Control of Stormwater. The California Regional Water Quality Control Board The California Regional Water Quality Control Board requires all projects that disturb the site to comply with Provision C.6 of the San Francisco Bay Regional Stormwater NPDES Permit in order to prevent construction site discharges of pollutants and other regulated materials during

construction. As required by the Chief Building Official and prior to the issuance of a building permit, the Applicant shall develop and submit a construction stormwater management plan as part of the Construction Management Plan to achieve timely and effective compliance with Provision C.6. Permit Provision C.6.ii provides sources for site specific, and seasonally-and-phase-appropriate, effective Best Management Practices (BMPs) that may be incorporated into the stormwater management plan. Copies of the Municipal Regional Stormwater Permit are available from the Piedmont Public Works Department and on-line at [cleanwaterprogram.org](http://cleanwaterprogram.org).

8. **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 (benchmark).

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 Performance 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.

9. **Fence.** The portion of the applicant's existing wood fence on the north property line that is directly adjacent to the new addition shall be increased in height to 7 ft., with the same quality of materials and design as the existing fence. This fence modification shall be subject to staff review and approval.

10. **Landscaping.** The applicant shall plant vegetation screening on the south side of the existing fence on the north property line.

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 Hobstetter, Seconded by Theophilos

Ayes: Hobstetter, Ode, Theophilos, Zhang, Simpson

Noes: None

Absent: Chase

**Variance and  
Design Review  
26 Manor Drive**

The Property Owner is requesting variance and design review to construct additions to the house in two locations. On the southern end of the house (facing the street), a 383 sq. ft. second story is proposed over the existing single-story portion of the house for a new master bath/closet, a library and two studies. At the rear of the house, a single story addition is proposed for an expanded kitchen/breakfast/family area. Window and door modifications, a new gate, 8 new skylights, and new exterior lighting are included. The application also proposes to demolish the existing garage, which crosses at the rear property line and is shared by the property at 27 York Drive, and construct a 1-car garage in the left (northeastern) rear corner of the lot. The requested variances are from: (1) Section 17.10.7 to allow the new garage to extend to within 8 in. of the left side property line in lieu of the code required minimum of a 4 ft. side yard setback; and (2) Section 17.10.8 to allow the new garage to extend to within 8 in. of the rear property line in lieu of the code required minimum of a 4 ft. rear yard setback.

Written notice was provided to neighbors. **Six affirmative, one negative response forms** were received.

**Public testimony** was received from:

Bernadette Joseph stated that the proposal is intended to provide two offices for her and her husband who occasionally both work from home as well as provide a library/computer room for her children. She also explained the current shared garage arrangement with her neighbor at 27 York which will be modified by both her application and an application to be submitted by this neighbor that will demolish the shared garage and provide for the construction of two, separate garages "back-to-back."

Mui Ho, Project Architect, explained how the new addition was designed to duplicate the existing architecture of the home in terms of exterior finishes,

window treatment and roof lines, improve the home's energy efficiency as well as preserve privacy between neighbors.

Bill Holland also described the unique situation wherein the existing garage straddles the property line and is shared by both himself and the applicant. He agreed as to the benefits of demolishing this shared garage and having each property owner construct their own parking structure, adding that originally he intended to have his application (Agenda Item #11) also considered tonight but decided at the last minute to revise his design from a carport to a 2-car garage, resulting in Commission consideration of his application being deferred to the next meeting. He requested that the existing landscaping screen between the two properties be maintained as a condition of project approval.

The Commission agreed as to the benefits of eliminating the existing "bundled" garage arrangement and replacing this situation with two, independently owned and constructed garage structures each located within their own appropriate property boundaries. The Commission also agreed that the proposed improvements are elegantly designed and architecturally compatible with the existing home.

**Resolution 103-V/DR-13**

WHEREAS, the Property Owner is requesting permission to construct additions to the house in two locations. On the southern end of the house (facing the street), a 383 sq. ft. second story is proposed over the existing single-story portion of the house for a new master bath/closet, a library and two studies. At the rear of the house, a single story addition is proposed for an expanded kitchen/breakfast/family area. Window and door modifications, a new gate, 8 new skylights, and new exterior lighting are included. The application also proposes to demolish the existing garage, which crosses at the rear property line and is shared by the property at 27 York Drive, and construct a 1-car garage in the left (northeastern) rear corner of the lot located at 26 Manor Drive, Piedmont, California, which construction requires variance and design review; and

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

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

1. The 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 unique situation of a shared garage straddling the property line. 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 many homes in the neighborhood have corner garages right on the property line. There is no other place for a garage structure on this property.
4. Accomplishing the improvement without variance would cause unreasonable hardship in planning, design, or construction because a garage cannot be constructed anywhere else on the property.
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 proposed additions and adjacent residences is reasonable and appropriate due to the existing topography and neighborhood development pattern. Upper level setbacks greater than the setbacks required for the lower level have been considered and are not necessary to reduce losses of ambient and reflected light because there is no impact.
7. The proposed additions have been designed in a way that reasonably minimizes view and light impacts on neighboring properties (as defined in Section 17.2.70). There is no impact on neighbor view or light.
8. The size and height of the additions are commensurate with the size of the lot (excluding the portions of the lot that cannot reasonably be built on), and are in keeping with the existing neighborhood development pattern.
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 existing or proposed on-site parking is appropriate to the size of the new additions and additional parking is not required to prevent unreasonable short and/or long term parking impacts on the neighborhood. The project proposes replacing a garage structure that is not used for parking with a new structure that will be used for vehicle parking, thus reducing on-street parking congestion.
10. The project complies with Design Review Guidelines II-1, II-3(a) through (c), II-4, II-5, II-6, II-7, III-1(a), III-2, III-2(a), III-3, III-4, III-5, III-5(a), III-6, III-6(a) and III-7.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review application for construction at 26 Manor 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 Inspection.

a. Optional: 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.

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.

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 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 an endorsement requiring notice to the City if the insurance is cancelled or changed, and Property Owner shall immediately arrange for substitute insurance coverage. If the Property Owner does not have a general contractor, the Property Owner shall maintain property insurance and coverage for contractors, which is substantially equivalent to the contractor's requirement of this section.

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

8. **Encroachment Permit.** Before the issuance of a building permit, the Property Owner shall apply for an encroachment permit to enable the construction over the public sewer easement, and provide access to the sewer line for future repairs and replacements.

9. **Foundation Design.** At the discretion of the City Building Official, the applicant may be required to design the proposed garage foundation with special footings, piers, slabs or other systems, to avoid damage to the existing sewer nearby, and to enable future sewer repairs and replacements.

10. **Roof Color.** The proposed flat roof shall be a non-reflective medium or dark color to minimize the visual impact on upslope properties.

11. **Garage Door.** The garage door shall be mechanically operable. If design modifications are necessary to accomplish this, those modifications shall be subject to staff review.

12. **BAAQMD Compliance.** The applicant shall comply with the Bay Area Air Quality Management District regulations related to the demolition of the garage. The Demolition Notification form is available on their website at [www.BAAQMD.gov/forms](http://www.BAAQMD.gov/forms).

13. **Driveway.** The driveway shall be repaired and repaved, subject to staff review and approval.

14. **Landscaping.** The existing landscaping screen along the rear property line shall be maintained.

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 Theophilos, Seconded by Ode

Ayes: Hobstetter, Ode, Theophilos, Zhang, Simpson

Noes: None

Absent: Chase

The Commission recessed at 6:55 p.m. for dinner and reconvened at 7:30 p.m.

**Variance and  
Design Review  
312 Blair Avenue**

The Property Owner is requesting variance and design review to demolish the existing main level deck with enclosed storage below in the right side yard and construct a new 2-car garage with main-level deck and trellis atop; make window and door modifications on the west facade of the house; add exterior lighting at the garage and deck; make landscape improvements; and make hardscape changes including a new driveway. The requested variances are from: (1) Section 17.10.7 to allow the new garage with roof deck to extend to within 1 ft. of the right (west) property line in lieu of the code required minimum of a 4 ft. side yard setback; and (2) Section 17.10.8 to allow the new garage and roof deck to extend to within 1 ft. of the rear (south) property line in lieu of the code required minimum of a 4 ft. rear yard setback.

A similar application was approved by the Commission on August 9, 2010, but this approval has expired.

Written notice was provided to neighbors. **Eight affirmative, two negative response forms** were received. **Correspondence** was received from: William King & Patricia Radez

**Public testimony** was received from:

Alex Gunst described the existing site conditions on his property, noting that the previously approved 2010 design has been slightly revised to eliminate stairs at the rear of the deck, reduce the height and width of the trellis at the north side of the deck and pull the new deck/garage structure further away from the property line. He stated that his neighbors, with the exception of the King/Radez, support project approval. He referenced his long-standing dispute with his King/Radez neighbors who own the property (210 Hillside) adjacent to his but who do not live in the house (the property is a rental).

Todd Williams, Attorney for William King & Patricia Radez, argued that there is no justification for approving variances for the project since variance could be avoided if the deck was moved more forward and reduced in size. He urged that the project be denied since the property is already overbuilt, numerous variances for this property have already been granted and most homes in the neighborhood do not have 2-car garages.

The Commission supported project approval, noting that it will greatly improve the current situation on the property in that the revised design improves the streetscape appearance of the property, embodies good architectural detailing, preserves privacy and reduces the property's existing non-conformity. The Commission felt that the project imposes no significant adverse impact on 210 Hillside, noting that the site conditions and structural relationships between 312 Blair and 210 Hillside were pre-existing at the time the King/Radez' purchased 210 Hillside.

**Resolution 107-V/DR-13**

WHEREAS, the Property Owner is requesting permission to demolish the existing main level deck with enclosed storage below in the right side yard and construct a new 2-car garage with main-level deck and trellis atop; make window and door modifications on the west facade of the house; add exterior lighting at the garage and deck; make landscape improvements; and make hardscape changes including a new driveway located at 312 Blair Avenue, Piedmont, California, which construction requires variance and design review; and

WHEREAS, a variance from the requirements of Chapter 17 of the Piedmont City Code is necessary in order to construct within the rear (south) and right (west) 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 fact that the west lot line is too close to enable code complying off-street parking without setback encroachment. 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 many properties in Piedmont have garages within setbacks. These garages help relieve on-street parking congestion. The project also reduces the property's existing non-conformity.
4. Accomplishing the improvement without variance would cause unreasonable hardship in planning, design, or construction for the reason cited in Finding #2.
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 and roof deck 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. Exterior materials, architectural detailing and the roof treatment of the proposed improvements match the existing house and the design of the project is consistent with one previously approved by the Commission and responsive to neighbor requests.
7. The proposed garage/roof deck has been designed in a way that reasonably minimizes view and light impacts on neighboring properties (as defined in Section 17.2.70). There is no up-lighting, only down-lighting and interior lighting is not visible to neighbors. The deck on the down-side slope is integrated in design so there is no increase in bulk.
8. The size and height of the addition is commensurate with the size of the lot (excluding the portions of the lot that cannot reasonably be built on), and is in keeping with the existing neighborhood development pattern. The project includes the creation of covered parking spaces, reduces the property's existing non-conformity and does not increase the property's mass or structural density.
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 proposed on-site parking is appropriate to the size of the new garage/roof deck and additional parking is not required to prevent unreasonable short and/or long term parking impacts on the neighborhood. The project increases the property's on-site parking capacity without changing the driveway access.
10. The project complies with Design Review Guidelines II-1, II-2, II-3(a) through (d), II-4, II-5, II-5(a), II-6, II-6(a) through (c), II-7(a), III-3, III-5, III-5(a), III-6, III-6(a), III-7 and III-7(a).

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review application for construction at 312 Blair Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

1. **Lot Line.** No exchange of property or lot line adjustment between 204 Hillside Avenue and 312 Blair Avenue are approved within the scope of this application;

2. **204 Hillside Avenue No-Cost Permit.** Because the project proposes the construction of features located on the neighboring property at 204 Hillside Avenue, the owners of 204 Hillside Avenue shall submit an application for a "zero cost" building permit that is to be attached to the "full cost" building permit application for the approved construction submitted by the owners of 312 Blair Avenue;

3. **Driveway Width.** At its narrowest cross section, the driveway shall have a minimum width of at least 10 feet.

4. **Approved Plan Set.** The approved plans are those submitted on May 23, 2013 with additional information submitted on May 29, 2013 after notices to neighbors were mailed and the application was available for public review.

5. **Previous Building Permits.** The applicant shall renew all previous building permits at 312 Blair Avenue that have expired prior to the issuance of a building permit for the construction approved in this applications.

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

a. Construction Site Control of Stormwater. The California Regional Water Quality Control Board requires all projects that disturb the site to comply with Provision C.6 of the San Francisco Bay Regional Stormwater NPDES Permit in order to prevent construction site discharges of pollutants and other regulated materials during construction. As required by the Chief Building Official and prior to the issuance of a building permit, the Applicant shall develop and submit a construction stormwater management plan as part of the Construction Management Plan to achieve timely and effective compliance with Provision C.6. Permit Provision C.6.c.ii provides sources for site specific, and seasonally- and phase-appropriate, effective Best Management Practices (BMPs) that may be incorporated into the stormwater management plan. Copies of the Municipal Regional Stormwater Permit are available from the Piedmont Public Works Department and on-line at [cleanwaterprogram.org](http://cleanwaterprogram.org).

b. Neighboring Property Owner Permission. Should the execution of the Foundation/Shoring/Excavation Plan require excavation into a neighboring property or if access onto the neighboring property is

necessary for construction, the applicant shall submit, prior to the issuance of Building Permit, a written statement from the neighboring property owner granting permission for access onto his/her property for the purpose of excavation and/or construction.

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 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 an endorsement requiring notice to the City if the insurance is cancelled or changed, and Property Owner shall



immediately arrange for substitute insurance coverage. If the Property Owner does not have a general contractor, the Property Owner shall maintain property insurance and coverage for contractors, which is substantially equivalent to the contractor's requirement of this section.

9. **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.

10. **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.

11. **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.

12. **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.

13. **Property Line Location.** A licensed land surveyor shall be required by the Building Department to verify and mark the location of the west and south property lines at the time of foundation and/or frame inspection to verify the approved setback dimension measured to the new construction.

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

15. **Geotechnical Report and Review.** As required by the Chief Building Official, 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.

**16. 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.

**17. Consultant Cost Recovery.** In order to accommodate the scope and nature of the Project proposed by the Property Owner, if the Director of Public Works deems it necessary to retain independent consultants with specialized expertise, including the City Engineer, the Property Owner shall make a cash deposit with the City at the time of the Building Permit Application in the amount of \$10,000 to be used to pay for the fees and expenses of such City consultants, or in any way otherwise required to be expended by the City for professional consultant assistance. If the cash deposit has been reduced to \$2,500 or less at any time, the Director of Public Works may require the Property Owner to deposit additional funds to cover any further estimated fees and expenses associated with consultants retained by the City on a regular basis or specifically for the Property Owner's Project. Any unexpended amounts shall be refunded to the Property Owner within 90 days after the Project has an approved Final Inspection by the Chief Building Official.

**18. 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.

**19. Neighboring Property Inspection.** Should the neighboring property owner provide consent, a licensed civil or structural engineer (chosen by the City, and paid for by the Property Owner) shall inspect neighboring homes at 210 Hillside Avenue and retaining walls 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 licensed civil or structural engineer chosen by the City (or a substitute licensed civil or structural engineer chosen by the City) shall inspect the same area in each neighboring home and property initially inspected, and shall present to the City a Report detailing any evidence of apparent damage that has been or reasonably might have been caused by activities on the Property Owner's property. The Report may include text, photographs, diagrams, or other evidence that would document the apparent damage. The Report will become a public record and may be used in connection with private causes of action.

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 Ode, Seconded by Theophilos

Ayes: Hobstetter, Ode, Theophilos, Zhang, Simpson

Noes: None

Absent: Chase

**Design Review and  
Fence Design Review**

The Property Owner is requesting design review and fence design review to remodel and expand the house through the following: the reconstruction of

**536 Magnolia Avenue**

the existing carport as a 2-car garage with roof deck atop and stairs to the rear yard; the construction of a 132 sq. ft. main level rear addition; the enlargement of the upper level rear deck; window, door, skylight and exterior lighting modifications; guardrail design alterations throughout; the removal of two chimneys; various changes to the interior including the retroactive approval for the development of habitable space on the basement level; and the widening of the driveway and construction of a retaining wall with guardrail in the front yard.

Written notice was provided to neighbors. **Four affirmative, one negative response forms** were received. **Correspondence** was received from: Jacquelyn Parsons; Darryl Lim

**Public testimony** was received from:

Michael Lucaccini explained that he has recently purchased the property and the proposed project is intended to correct deferred maintenance problems, modernize the home, improve its structural integrity and take advantage of the property's Bay View potential. He stated that the large cedar tree in the front yard will be preserved and protected during construction.

Arleta Chang, Project Architect, described how the design has been modified to minimize impacts on neighboring property, noting that the proposed 12 ft. ceiling height of the garage is necessary to create a smooth transition between the main level of the home and the roof deck.

The Commission discussed the project at length with Ms. Chang, voicing concern that the project as currently designed imposes significant light and sky view impact on the neighbor across the street, the 12 ft. ceiling height and large overhang, with inset railing, is out of proportion and inconsistent with the traditional craftsman-style architecture of the home, and that better design options and alternatives exist for achieving the applicant's goals with less impact on neighbor view corridors. Suggestions included reducing the 12 ft. ceiling height, modifying the driveway slope, relocating the bulk of the mass more to the north and providing for a stepped transition between the home and roof deck. Ms. Chang argued that the sky view and light impacts on the neighbor across the street (410 Hillside Ct.) were not significant nor protected as defined by the City Code and in any case were mitigated by the 105 ft. distance separating the two homes.

**Resolution 136-DR-13**

WHEREAS, the Property Owner is requesting permission to remodel and expand the house through the following: the reconstruction of the existing carport as a 2-car garage with roof deck atop and stairs to the rear yard; the construction of a 132 sq. ft. main level rear addition; the enlargement of the upper level rear deck; window, door, skylight and exterior lighting modifications; guardrail design alterations throughout; the removal of two chimneys; various changes to the interior including the retroactive approval for the development of habitable space on the basement level; and the widening of the driveway and construction of a retaining wall with guardrail in the front yard located at 536 Magnolia 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 project is categorically exempt under the California Environmental Quality Act, pursuant to Section 15301, Class 1(e) but that the proposal does not conform with the criteria and standards of Section 17.20.9 of the Piedmont City Code:

1. The exterior design elements are not in harmony with existing house and neighborhood development. These elements include but are not limited to: the roof overhang on the garage, the railing design, the massing and proportions on the rear as it relates to views and the 12 ft. ceiling height and the overall scale of the proposal. The project should be redesigned so as to reduce garage volume by lowering the garage ceiling height.
2. The proposed upper level addition/expansion has not been designed in a way that reasonably minimizes view and light impacts on neighboring properties. There is a view impact on the neighbor across the street that can be mitigated.
3. The size and height of the addition is commensurate with the size of the lot but there are other ways to configure the addition on the site that would be in better keeping with the neighborhood pattern.
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.
5. The project fails to comply with Design Review Guidelines II-1, II-2, II-3(a), through (d), II-5, II-5(a), II-7, III-1 and III-5.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission denies, without prejudice, the design review application for construction at 536 Magnolia Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City.

Moved by Hobstetter, Seconded by Theophilos

Ayes: Hobstetter, Ode, Theophilos, Zhang, Simpson

Noes: None

Absent: Chase

**Variance and  
Design Review  
142 Ricardo Avenue**

The Property Owner is requesting variance and design review to make various modifications at the rear of the property including an 18 sq. ft. addition at the northeast corner of the house; modifications to the rear roof line; and a new wood trellis, deck and exterior lighting. Other proposed modifications to the house include excavation to the basement level to create 345 sq. ft. of additional living space and modifications to doors and windows throughout the house. The requested variances are from: (1) Section 17.10.7 to allow the eave of the new addition to extend to within 2'10" of the left side property line in lieu of the code required minimum of a 4' side yard setback; and (2) Section 17.22.2(a) to allow a floor area ratio of 57.2% in lieu of the code permitted maximum of 55% for a parcel which is 5,000 sq. ft. or less.

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

**Public testimony** was received from:

Ann Dong stated that the purpose of the project is to update her kitchen, improve garage access and make the basement area usable living space.

James Kellogg, Project Architect, described the proposed changes to the 1911 craftsman-style residence, noting that if the kitchen improvements and the basement improvements were done independently, there would be no floor area ratio variance required because the kitchen expansion would not exceed FAR and the basement improvements would be exempt under Section 17.22.3 of the City Code. He added that the side yard variance is necessary to preserve existing building lines and thus avoid having the addition appear as a "tacked on."

The Commission supported project approval, agreeing that the improvements were attractively designed and architecturally consistent with the existing house, the side yard variance was justified for architectural reasons, the project does not increase the property's existing mass and the improvements greatly enhance the applicant's home with minimal impact on neighboring properties.

**Resolution 139-V/DR-13**

WHEREAS, the Property Owner is requesting permission to make various modifications at the rear of the property including an 18 sq. ft. addition at the northeast corner of the house; modifications to the rear roof line; and a new wood trellis, deck and exterior lighting. Other proposed modifications to the house include excavation to the basement level to create 345 sq. ft. of additional living space and modifications to doors and windows throughout the house located at 142 Ricardo 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 build within the 4 ft. left side yard (north) setback and to exceed the City's 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 current configuration of the home on the lot. 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 project preserves the architectural quality of the residence, no additional mass is being added to the property and the improvements do not negatively impact adjacent properties.

4. Accomplishing the improvement without variance would cause unreasonable hardship in planning, design, or construction because a code-complying project cannot be obtained without variance.
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 in that neighborhood compatibility is maintained in terms of scale and mass. The proposed project will not overpower adjacent properties, the addition is consistent with the existing home in terms of materials, architectural detailing and roof line and will be indistinguishable from the main residence.
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 change to the height or bulk of the existing residence.
8. 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.
9. The project complies with Design Review Guidelines II-1, II-2, II-3, II-3(a) through (d), II-6(a) and II-7(a).

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the variance and design review application for construction at 142 Ricardo Avenue, 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.
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 (benchmark).
  - 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 Performance 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.

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. **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.

5. **Approved Plan Set.** The approved plans are those submitted on May 21, 2013, with revised sheets submitted on May 29, 2013, after notices to neighbors were mailed and the application was available for public review.

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



with applicable law). The City reserves the right to require compliance with applicable laws and to attach conditions after initial approval is given, if noncompliance is discovered or additional conditions are considered necessary and appropriate in light of Commission/Council findings.

Moved by Ode, Seconded by Simpson

Ayes: Hobstetter, Ode, Theophilos, Zhang, Simpson

Noes: None

Absent: Chase

#### **ADJOURNMENT**

There being no further business, Chairman Zhang adjourned the meeting at 9:10 p.m.