

PIEDMONT PLANNING COMMISSION

Regular Meeting Minutes for Monday, July 14, 2014

A Regular Session of the Piedmont Planning Commission was held July 14, 2014, 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 June 30, 2014.

CALL TO ORDER

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

ROLL CALL

Present: Commissioners Phillip Chase, Susan Ode, Louise Simpson, Tony Theophilos, Tom Zhang and Alternate Commissioner Eric Behrens

Staff: City Planner Kate Black, Assistant Planner Kevin Jackson, Planning Technicians Jennifer Gavin, Janet Chang and Lauren Seyda and Recording Secretary Chris Harbert

City Council Liaison: Councilmember Tim Rood

CONSENT CALENDAR

By procedural motion, the Commission placed the following applications on the Consent Calendar:

- 271 Crocker Avenue (Fence Design Review)
- 1304 Oakland Avenue (Fence Design Review)
- 208 Ramona Avenue (Fence Design Review)
- 37 Lake Avenue (Fence Design Review)

At the end of the meeting, the following Resolutions were approved adopting the Consent Calendar:

Fence Design Review 271 Crocker Avenue

Resolution 155-DR-14

WHEREAS, the Property Owner is requesting permission to construct a new 7 ft. high wood fence along the north property line located at 271 Crocker 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 17.20.9 of the Piedmont City Code:

1. The exterior design elements are aesthetically pleasing as a whole and harmonious with existing and proposed neighborhood development in that the project essentially involves adding some additional fence panels that match the existing fence and which are not visible to neighbors.
2. The design is appropriate, considering its effect on neighboring properties' existing views, privacy and access to direct and indirect light because there is no impact on adjacent neighbors.
3. The safety of residents, pedestrians, and vehicle occupants and the free flow of vehicular traffic are not adversely affected, considering the circulation pattern, parking layout and points of ingress and egress because the proposed

corner fence extensions are not located near pedestrian or vehicle traffic corridors.

4. The project complies with Design Review Guidelines V-1, V-2, V-5, V-5(a) through (c), V-6, V-7, V-8.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review application for construction at 271 Crocker Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

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

2. **Property Line Location.** A licensed land surveyor shall be required by the Building Department to verify and mark the location of the north property line at the time of foundation and/or frame inspection verifying that the new fence, including all footings and posts, are located completely within the applicants' property. In lieu of a survey, the applicant may submit a signed Fence Location Agreement with the property owner at 227 Crocker Avenue.

3. **Fence.** The new fence shall be stained and/or painted to match the color of the existing fence along the east 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 Theophilos, Seconded by Zhang

Ayes: Chase, Ode, Simpson, Theophilos, Zhang

Noes: None

Absent: None

**Fence Design Review
1304 Oakland Avenue**

Resolution 169-DR-14

WHEREAS, the Property Owner is requesting permission to remove the existing grape stake fence along and perpendicular to Jerome Avenue and along the south property line, and replace them in modified locations with new approximately 5 ft. 6 in. high (maximum) wood fences with two swing gates located at 1304 Oakland 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 17.20.9 of the Piedmont City Code:

1. The exterior design elements, including but not limited to the facade, line and arrangement of structures on the parcel, are aesthetically pleasing as a whole and harmonious with existing and proposed neighborhood development in that the proposed fence replicates in style, height and materials a previously approved fence and is an aesthetic upgrade from the existing rustic grape stake fence.
2. The design is appropriate, considering its effect on neighboring properties' existing views, privacy and access to direct and indirect light because there is no impact on adjacent properties.
3. The safety of residents, pedestrians, and vehicle occupants and the free flow of vehicular traffic are not adversely affected, considering the circulation pattern, parking layout and points of ingress and egress because there is no impact on existing circulation patterns.
4. The project complies with Design Review Guidelines V-1 through V-5, V-5(a) through (c), V-6 through V-11.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review application for construction at 1304 Oakland Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

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

2. **Fence Location.** The new fences and all their footings shall be located entirely within the property lines of 1304 Oakland Avenue. A licensed land surveyor shall be required by the Building Department to verify and mark the location of the south property verifying that the new fence along the south property line and all its footings are located entirely within the applicants' property. In lieu of a survey, the applicant may submit a signed Fence Location Agreement with the property owner at 306 Jerome Avenue to verify the location of the fence along the south property line.

3. **Action.** Action being taken in this design review application excludes any fence that is no more than 6 ft. high and located outside of the 20 ft. street-facing setback, such as that proposed along the south property line, as noted in Piedmont Municipal Code Section 17.20.4.a.ii.

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

Moved by Chase, Seconded by Simpson

Ayes: Chase, Ode, Simpson, Theophilos, Zhang

Noes: None

Absent: None

**Fence Design Review
208 Ramona Avenue**

Resolution 175-DR-14

WHEREAS, the Property Owner is requesting permission to replace the wood fence at the rear property line facing Lorita Avenue located at 208 Ramona 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 17.20.9 of the Piedmont City Code:

1. The exterior design elements are aesthetically pleasing as a whole and harmonious with existing and proposed neighborhood development in that the new fence is attractively designed, well constructed and includes aesthetic treatments on top.
2. The design is appropriate, considering its effect on neighboring properties' existing views, privacy and access to direct and indirect light because the new fence replaces a deteriorating fence at a lower height than existing.
3. The safety of residents, pedestrians, and vehicle occupants and the free flow of vehicular traffic are not adversely affected, considering the circulation pattern, parking layout and points of ingress and egress because there is no change to existing circulation patterns.
4. The project complies with Design Review Guidelines V-1, V-2, V-5, V-5(a) through (c), V-6, V-7, V-8.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review application for construction at 208 Ramona Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following condition:

- **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.

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 Zhang, Seconded by Chase

Ayes: Chase, Ode, Simpson, Theophilos, Zhang

Noes: None

Absent: None

**Fence Design Review
37 Lake Avenue**

Resolution 177-DR-14

WHEREAS, the Property Owner is requesting retroactive permission for a new wood fence atop an existing concrete retaining wall located along the west (left) property line located at 37 Lake 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 17.20.9 of the Piedmont City Code:

1. The exterior design elements are aesthetically pleasing as a whole and harmonious with existing and proposed neighborhood development in that the replacement lattice fence is an improvement over the previously existing chain link fence. The openness of the lattice design adds finishing touches to the separation between the applicant's property and that of his left-side neighbor.
2. The design is appropriate, considering its effect on neighboring properties' existing views, privacy and access to direct and indirect light because the new fence will improve privacy for both the applicant and his adjacent neighbor -- there is no direct or indirect visual access between the two houses -- and will allow more light onto properties because of the elimination of the densely ivy-covered chain link fence.
3. The safety of residents, pedestrians, and vehicle occupants and the free flow of vehicular traffic are not adversely affected, considering the circulation pattern, parking layout and points of ingress and egress because there is no change in existing circulation patterns.

4. The project complies with Design Review Guidelines V-1, V-2, V-3, V-4, V-5, V-5(a) through (c), V-6 through V-11.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review application for construction at 37 Lake Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following condition:

- **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.

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

Moved by Chase, Seconded by Simpson

Ayes: Chase, Ode, Simpson, Theophilos, Zhang

Noes: None

Absent: None

PUBLIC FORUM

Robin Flagg requested the Commission to amend the City Code to exempt artificial turf from the code's hardscape coverage calculations. She noted that because her lawn is dying due to the drought, she wanted to replace her lawn with synthetic turf. However, she was advised by the City that her turf installation would exceed the property's hardscape coverage allowance and that a variance for this type of installation would be extremely unlikely. She provided a sample of the proposed synthetic turf in support of her contention that the artificial turf is an attractive alternative to live grass. By procedural motion (moved by Zhang, seconded by Chase and unanimously carried) the Commission directed that this issue be scheduled for Commission discussion on the August agenda. As part of the staff report on this matter, the Commission requested staff to provide background information (reports and minutes) of when the Commission last considered code amendments regarding hardscape coverage inclusions and calculations (approximately 18 months ago). Commissioner Chase also requested that if possible, artificial turf information from vendors be provided.

APPROVAL OF MINUTES

Resolution 14-PL-14

RESOLVED, that the Planning Commission approves as submitted its meeting minutes of June 9, 2014.

Moved by Theophilos, Seconded by Zhang
Ayes: Chase, Ode, Simpson, Theophilos, Zhang
Noes: None
Absent: None

REGULAR CALENDAR

Housing Element Update

The Commission considered the following items of regular business:

City Planning Consultant Barry Miller narrated a power-point presentation of the City's *Working Draft* of the Housing Element prepared based upon input received during five public hearings before the Planning Commission as well as a June 30th Town Hall meeting. The presentation provided a brief recap of the extensive update process as well as outlined how the proposed 2015 Housing Element reflects changes from the current 2011 version in terms of which programs and policies have been implemented, updated or supplemented with new additions. After Commission and public review of this *Working Draft*, Mr. Miller recommended that the Commission forward the draft to the City Council for review and comment prior to the document's submittal to the California Department of Housing and Community Development. It is anticipated that City staff will then work with state reviewers (the HCD) during the fall so that a final Housing Element can be adopted by the end of 2014. Bay Area cities are required to adopt new Housing Elements for 2015-2022 by January 31, 2015.

Public testimony was received from:

William Blackwell proposed that the Commission consider incorporating the following suggestions in the *Working Draft* as a way to further promote housing development in Piedmont:

1. Eliminate the imposition of a standard minimum lot size and width requirement for developing vacant lots by permitting single-family residences to be built on vacant lots which are comparable in size and width with prevailing neighborhood parcels. Such flexibility would increase housing development opportunities.
2. Eliminate the requirement that parking for second units must be off-street and instead develop guidelines wherein on-street parking for second units can be routinely granted under certain street frontage conditions, e.g., corner and through lots which have much more street frontage than typical lots.
3. Eliminate the current exemption that owners of vacant lots do not pay the Municipal Services Tax on these parcels. Such exemption provides a disincentive for developing these lots. Eliminating this exemption may encourage these parcel owners to subdivide, sell or develop their vacant lots to create more housing opportunities.
4. Explore the possibility of encouraging the East Bay Regional Park District to acquire the vacant EBMUD reservoir property and convert this property into a regional park. The development of the reservoir property into a park would then eliminate the need for the Blair Park acreage to remain parkland because of redundancy. Thus freeing up the Blair Park acreage for potential senior/townhouse development.

The Commission discussed Mr. Blackwell's suggestions as well as general issues related to the benefits of second unit housing and how incentives could be devised to promote such housing in Piedmont. The Commission noted that the suggestion (i) regarding Municipal Services Tax exemption is a City Council issue not directly related to the Housing Element; and (ii) the purchase and development of the EBMUD reservoir property involves agencies beyond the scope of the City to control and any potential development of Blair Park for housing would entail an extensive public input process as well as require an amendment to the City's General Plan.

Resolution 15-PL-14

RESOLVED, that the Planning Commission forwards the *Working Draft* of the Housing Element to the City Council for review on July 21, followed by its submittal to the California Department of Housing and Community Development for administrative review by early August; and

RESOLVED FURTHER, that the Commission shall continue having discussions on those components that need further discussion going forward.

Moved by Simpson, Seconded by Chase

Ayes: Chase, Ode, Simpson, Theophilos, Zhang

Noes: None

Absent: None

**Retaining Wall
Design Review
1750 Trestle Glen Road**

The Property Owner is requesting retaining wall design review to partially remove the existing wood retaining wall; replace the existing guardrail atop the existing retaining wall with a new code compliant wood guardrail; and construct a new 5 ft. tall concrete segmental block retaining wall along Trestle Glen Road.

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

Neither the applicant nor a representative was present to answer Commission questions concerning details regarding the proposed retaining wall. Staff was instructed to call the applicant and ascertain an arrival time.

Resolution 16-PL-14

RESOLVED, that the Planning Commission postpones consideration of the retaining wall design review application for 1750 Trestle Glen Road to the end of tonight's agenda pending the arrival of the applicant or his representative; and

RESOLVED FURTHER, should the applicant for 1750 Trestle Glen not be available to speak to his application tonight, the application shall be continued to the August meeting.

Moved by Zhang, Seconded by Chase

Ayes: Chase, Ode, Simpson, Theophilos, Zhang

Noes: None

Absent: None

Later in the meeting after the Commission's dinner recess, the applicant's project architect arrived.

Public testimony was received from:

Phil Zeidman, Project Architect, apologized for being delayed in traffic. He responded to Commission questions by describing the segmented concrete block construction and configuration of the new retaining wall which is intended to replace a section of an existing retaining wall that is failing. The design of the new wall replicates a similarly designed wall at the rear of the property. He stated that the wall has been designed by a structural engineer and that drainage controls are included in the wall's design. In addition, he explained how both ends of the new wall will blend into the contours of the hillside. Mr. Ziedman also noted that two small tree spouts may need to be removed and replaced to facilitate the new wall but that the City's two existing street trees should remain unaffected.

The Commission, with the exception of Commissioner Zhang, supported application approval, agreeing that the interlocking concrete block design of the wall will be visually screened by vegetation planted within its segmented spaces and therefore, this new wall will not be readily visible to neighbors. Commissioner Zhang objected to the wall's aesthetics, noting that screening vegetation planted in the segmented spaces of the rear wall does not appear to be thriving and he voiced concern that the same disappointing result could be expected with the proposed new front wall. Commissioner Zhang also felt that the new wall was not well integrated with the home's front stair and found the 5 ft. gap between the two walls and the location of the guardrail to be perplexing. As to the wall's possible impact on existing City street trees, the Commission agreed that if these trees are removed or if additional trees are planted within the City's right-of-way, permission for such action will be required from the City's Park Commission.

Resolution 179-DR-14

WHEREAS, the Property Owner is requesting permission to partially remove the existing wood retaining wall; replace the existing guardrail atop the existing retaining wall with a new code compliant wood guardrail; and construct a new 5 ft. tall concrete segmental block retaining wall along Trestle Glen Road located at 1750 Trestle Glen Road, Piedmont, California, which construction requires design review; and

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

1. The exterior design elements (including but not limited to height, bulk, area openings, breaks in the wall) are aesthetically pleasing as a whole and harmonious with existing and proposed neighborhood development in that the new landscaped concrete block wall replaces an existing failing wood wall and is similar in design to other types of block walls on the property and in the neighborhood.
2. The design is appropriate, considering its effect on neighboring properties' existing views, privacy and access to direct and indirect light because aesthetic views will be improved by the replacement of a blank failing wood wall with a new landscaped retaining wall that is no higher in height at its top level than the existing wall it replaces and neighboring properties' retaining walls.

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

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

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review application for construction at 1750 Trestle Glen Road, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following condition:

1. **Defense of Legal Challenges.** If there is a third party administrative, legal or equitable action challenging the project approvals, including CEQA issues, the Property Owner shall defend and indemnify the City against any liability, fees and costs arising out of the defense, including the costs of City's own counsel. If such an action is filed, the Property Owner and City shall then enter into an agreement regarding selection of counsel and other provisions related to the defense. For this purpose, "City" includes the City and its elected and appointed officials, agents, officers and employees.
2. **Tree Planting.** If as part of this project, new trees are proposed to be planted within the City right-of-way, permission for such planting shall be obtained in advance from the City.

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

Moved by Chase, Seconded by Simpson

Ayes: Chase, Ode, Simpson, Theophilos

Noes: Zhang

Absent: None

**Design Review
1 Maxwellton Road**

The Property Owner is requesting design review to construct new outdoor living areas and site features on the undeveloped property at 1 Maxwellton Road, including: retaining walls, patio terraces; wood deck; outdoor kitchen; fountain; built-in benches; trellises; Jacuzzi tub; guardrails; planter beds and boxes; exterior light fixtures; on-grade stairs and paths; and landscaping. The Applicants own both 1 and 3 Maxwellton Road.

Written notice was provided to neighbors. **Two affirmative, one negative response forms** were received. **Correspondence** was received from: Chu Family/Jung Family/Stein Family; Philip Stein

Public testimony was received from:

Sameer Samat displayed photographs of the his property, noting his recent purchase of the property at 1 and 3 Maxwellton and his desire to create an outdoor play area for his children as well as an outdoor entertaining area along the side of his home at 3 Maxwellton. He stated that 3 Maxwellton does not afford the opportunity to create livable outdoor living space because of its steep slope.

Ferdinand Castillo, Project Landscape Architect, explained how outdoor recreational space for 3 Maxwellton would be created on 1 Maxwellton in accordance with the City's design review guidelines. He stated that the design of the proposed improvements on 1 Maxwellton mirror the traditional architectural style of the residence at 3 Maxwellton, will be shielded from neighbor view by dense vegetation, are located a substantial distance from neighboring homes and involve minimal downward-directed exterior lighting.

William Langbehn and James Jernigan, Project Geotechnical Engineer and Civil Engineer, respectively, explained the reasons for the previous recent slides on 3 and 5 Maxwellton Road, stressing that the factors which caused those slides are not present at 1 Maxwellton. They also described the significant geotechnical engineering that will be involved if the project is approved, emphasizing that the project will actually strengthen and improve slope stability: (i) the terracing will remove load from the slope; and (ii) the seepage and drainage controls built into the design of the retaining walls will capture and collect surface, subsurface and run-off water from the hillside.

The Commission supported application approval, noting that the proposed project (i) will improve slope stability; (ii) the location of the proposed improvements are appropriate and logical to provide usable outdoor space for the family home at 3 Maxwellton which currently does not have any usable outdoor area; (iii) the design of the improvements is compatible with the aesthetics and architectural style of the main residence; (iv) the proposed improvements are screened from public and neighbor view; and (v) the project still maintains 1 Maxwellton as a separate lot.

Resolution 180-DR-14

WHEREAS, the Property Owner is requesting permission to construct new outdoor living areas and site features on the undeveloped property at 1 Maxwellton Road, including: retaining walls, patio terraces; wood deck; outdoor kitchen; fountain; built-in benches; trellises; Jacuzzi tub; guardrails; planter beds and boxes; exterior light fixtures; on-grade stairs and paths; and landscaping located at 1 Maxwellton Road, Piedmont, California, which construction requires design review; and

WHEREAS, after reviewing the application, plans and any and all testimony and documentation submitted in connection with such application, and after having visited subject property, the Piedmont Planning Commission finds that the project is categorically exempt under the California Environmental Quality Act, pursuant to Section 15303, Class 3(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 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. While the proposed design includes unscreened deck underpinnings, these underpinnings are not visible to neighbors because of the property's steep slope and very dense vegetation. These unscreened deck underpinnings are similar to other construction found on steep Piedmont slopes.

2. The proposed upper level addition has been designed in a way that reasonably minimizes view and light impacts on neighboring properties (as defined in Section 17.2.70). The new construction is located far from neighboring properties and is screened by dense vegetation on all sides. The proposed project will reduce the potential of slides on adjacent properties. Only low voltage pathway and adjacent accent lighting is proposed.

3. The size and height of the addition is commensurate with the size of the lot (excluding the portions of the lot that cannot reasonably be built on), and is in keeping with the existing neighborhood development pattern. The project will improve the use of the main residence (#3 Maxwellton) by providing outdoor living space for this home which currently has none. The project also improves a very difficult piece of property by terracing. The proposed improvements are in keeping with other residential development on steep slopes.

4. The safety of residents, pedestrians, and vehicle occupants and the free flow of vehicular traffic are not adversely affected, considering the circulation pattern, parking layout and points of ingress and egress. In accordance with Sections 17.16.1 and 17.22.1, the existing or proposed on-site parking is appropriate to the size of the new upper level addition, and additional parking is not required to prevent unreasonable short and/or long term parking impacts on the neighborhood. The proposed improvements improve slope stability and do not increase residential density in the neighborhood.

4. The project complies with Design Review Guidelines II-1, II-2, II-3, II-3(a) through (d), II-5, II-5(a), II-6, II-6(a) through (c), IV-1, IV-1(b), IV-2, IV-2(a), IV-3, IV-4.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review application for construction at 1 Maxwellton Road, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

1. **Exterior Light Fixtures.** The new exterior spot lights shall be a maximum 50 watts and be downward-directed so that they do not shine on neighboring properties.

2. **Fire Protection.** Due to limited and difficult access to the site, the final method of fire protection for the proposed construction, which may include an automatic fire suppression system, must be approved by the Piedmont Fire Department prior to the issuance of a building permit.

3. **Sanitary Sewer Easement.** Should a sanitary sewer system be provided that ties into the sanitary sewer system of the adjacent property at 3 Maxwellton Road (rather than providing a new sanitary connection to the main along Moraga Avenue), the Property Owner shall record a formal sewer easement across the property at 3 Maxwellton Road prior to the issuance of a building permit. Copies of all new recorded easements and quitclaims shall be provided prior to the issue of any building permit.

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. **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.

6. **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.

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

8. **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.

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

10. **Final Landscape Plan.** Before issuance of a building permit, the Property Owner shall submit for staff review and approval a Final Landscape Plan that shows all trees on the property including those proposed for removal, those proposed for retention as well as in-lieu trees required by a Certified Tree

Preservation Plan.

11. Arborist's Report. Before the issuance of a building permit, the Property Owner shall submit an Arborist's Report that includes tree preservation measures to preserve existing trees proposed to remain on-site, as well as any nearby off-site trees. The tree preservation measures shall be on the appropriate sheets of the construction plans. The arborist shall be on-site during critical construction activities, including initial and final grading, to ensure the protection of the existing trees. The arborist shall document in writing and with photographs the tree protection measures used during these critical construction phases. If some trees have been compromised, mitigation measures must be specified in writing, and implementation certified by the Project Arborist. Trees proposed for removal shall have a similar number of in-lieu replacement trees planted elsewhere on the property, which shall be shown on the final landscape plan. Before the Final Inspection, the Arborist shall file a report to the City certifying that all tree preservation measures as recommended have been implemented to his/her satisfaction and that all retained trees have not been compromised by the construction.

12. Certified Tree Preservation Plan. Before the issuance of a building permit, the Property Owner shall prepare for review and approval by staff a Tree Preservation Plan that incorporates the tree preservation measures recommended in the Arborist's Report, required as part of Condition #11 above. The tree preservation measures shall be on the appropriate sheets of the construction plans. The arborist shall be on-site during critical construction activities, including initial and final grading, to ensure the protection of the existing trees. The arborist shall document in writing and with photographs the tree protection measures during these critical construction phases. If some trees have been compromised, mitigation measures must be specified in writing, and implementation certified by the Project Arborist. Trees proposed for removal shall have a similar number of in-lieu replacement trees planted elsewhere on the property, which shall be shown on the final landscape plan. Replacement tree size is subject to staff review, and shall be commensurate with the size and numbers of trees to be removed. They shall generally be a minimum of 24" box size.

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

13. 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.

14. Geotechnical Report and Review. The Property Owner shall submit a report prepared by a geotechnical engineer of the Property Owner's choice that fully assesses the existing site conditions, and addresses all issues regarding excavation and grading, foundations and their construction, drainage, retaining

wall systems, periodic on-site observations, and other related items involving the Project.

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

15. City Facilities Security. As required by the Director of Public Works, the Property Owner shall provide a specific cash deposit, letter of credit, bank guarantee, or other similar financial vehicle ("City Facilities Security") in the amount of \$25,000 as established by the Director of Public Works. This financial vehicle serves as an initial sum to cover the cost of any potential damage to City property or facilities in any way caused by Property Owner, Property Owner's contractors or subcontractors, or any of their agents, employees or assigns, and related in any way to the Project. The Property Owner is responsible for the full cost of repair as determined by the City Engineer prior to final inspections. The form and terms of such City Facilities Security shall be determined by the Director of Public Works after consultation with the Property Owner. The Director may take into account any of the following factors: the cost of construction; past experience and costs; the amount of excavation; the number of truck trips; the physical size of the proposed project; the logistics of construction; the geotechnical circumstances at the site; and City right-of-way and repaving costs.

a. To provide clear baseline information to assist in determining whether damage to the City's facilities has been caused by the Property Owner or others working for or on behalf of Property Owner, the City will document such facilities (including, without limitation, streets and facilities along the approved construction route as specified in the Construction Management Plan, to establish the baseline condition of the streets and facilities. The City shall further re-document the streets as deemed appropriate after the Project commences until the Director of Public Works determines that further documentation is no longer warranted. As part of the documentation, the City may water down the streets to better emphasize any cracks or damage in the surface. The Property Owner is responsible for the full cost of the documentation and repair work as determined by the City Engineer, and shall reimburse the City for those costs prior to the scheduling of final inspection.

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

16. **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.

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

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

19. **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.

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.

20. 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 Structures;
- ix. Completion of Hardscaping and Landscaping; and
- x. 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.

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 Chase

Ayes: Chase, Ode, Simpson, Theophilos, Zhang

Noes: None

Absent: None

The Commission recessed for dinner at 6:45 p.m. and reconvened at 7:15 p.m.

**Pedestrian and Bicycle
Master Plan Update**

Niko Letunic of Eisen/Letunic, the transportation and planning consulting firm retained to prepare the City's Pedestrian & Bicycle Master Plan (PBMP), narrated a power-point presentation on the implementation strategy for the PBMP, noting in particular the Plan's recommended high-priority projects, programs and policies, the implementation tools being developed for these high priority projects, the consideration criteria for project selection and suggestions related to the phasing and funding of these projects. It is anticipated that a Draft Piedmont Pedestrian and Bicycle Master Plan and environmental clearance document will be presented for Commission review and comment at the August meeting. During the presentation, Mr. Letunic noted that the majority of public input received from on-line surveys, correspondence and oral testimony came from pedestrians rather than cyclists and that this input was from all segments of Piedmont's population demographics. Several Commissioners made comments concerning the balance between pedestrian and bicycle improvements, and noted concerns about vehicle and bicycle conflicts.

Public testimony was received from:

Councilmember Tim Rood voiced his distress over the Commission's preference that more attention be given to pedestrian-oriented improvements, stressing that the City has a well-developed pedestrian infrastructure but it lacks a sustainable bike network to safely accommodate the needs of cyclists, whose numbers are growing and can be expected to increase in the coming years. Councilmember Rood and the Commission also exchanged comments regarding the absence of "sharing of the road" attitudes by drivers and cyclists as well as the mutual disregard of traffic laws and safety. The City Planner and Mr. Letunic emphasized that a critical component of the PBMP will be public education for both drivers and cyclists and greater enforcement of traffic safety laws, and that the Plan will include a reasonable balance between bicycle and pedestrian improvements as required under the grant funding. The Commission also discussed the proposed "road diet" suggestion for Grand Avenue, urging that before implementation of such a measure, traffic flow in front of Ace Hardware and Ace Garden Center be evaluated to insure that any lane narrowing or elimination will not result in back-ups and stopped traffic flow caused by drivers waiting to enter Ace's two parking lots.

ADJOURNMENT

There being no further business, Chairman Ode adjourned the meeting at 8:15 p.m.