



AGENDA REPORT


TO: Jestin D. Johnson
City Administrator

FROM: William A. Gilchrist
Director, Planning and
Building Department

SUBJECT: Memorandum of Agreement for 183
Somerset Rd

DATE: April 29, 2024

City Administrator Approval


Jestin Johnson (May 15, 2024 18:40 PDT)

Date:

May 15, 2024

RECOMMENDATION

Staff Recommends That The City Council Adopt A Resolution Authorizing The City Administrator To Enter Into A Memorandum Of Agreement With The City Of Piedmont Establishing That The City Of Piedmont Will Process Planning and Building Entitlements For A Single Family Dwelling Remodel And Addition At 183 Somerset Rd, A Property Located Within Both Jurisdictions, And Adopting Appropriate California Environmental Quality Act Findings

EXECUTIVE SUMMARY

Staff recommends that the City Council authorize the City Administrator to enter into a Memorandum of Agreement (MOA) with the City of Piedmont for a construction project that entails a remodel and addition at a single-family residence at 183 Somerset Rd (Property). The Property is located within both jurisdictions and the MOA will allow the City of Piedmont to act as the lead agency for the issuance of planning and building permits for the proposed development.

BACKGROUND / LEGISLATIVE HISTORY

Property Description

The Property located at 183 Somerset Rd consists of two lots, and four tax parcels (APN No. 048C718104900, 048C718105000 and 051482501700, 051482501800), that straddle the Piedmont/Oakland border. The legal description and assessor parcel map for the Property is provided as **Attachment A**. The Property is generally bounded by single-family properties; 160-190 Somerset Rd (Piedmont) across the street to the south, a single-family property at 135 Somerset Rd (Piedmont) to the west, a single-family property at 235 Somerset Rd (Oakland) to the east, and two single-family properties at 401 and 415 Pershing Dr (Oakland) to the north at the rear of the Property.

The Property consists of 20,800 square feet (determined by a survey), with approximately 12,158 square feet (or 58 percent) located in Oakland, and approximately 8,642 square feet (or 42 percent) located in Piedmont.

CED Committee
May 28, 2024

When considering properties intersected by the border between the City of Piedmont and the City of Oakland, by long-standing precedent between the cities, certain properties which have vehicular and pedestrian access to Somerset Rd are considered Piedmont properties for the purposes of providing 911 emergency and other municipal services, and certain properties are considered Oakland properties for the purposes of providing 911 emergency and other municipal services. The Property is considered a Piedmont property eligible for Piedmont 911 emergency services, municipal waste removal services, access to the Piedmont Unified School District schools, and other municipal services. The neighboring residences which have vehicular and pedestrian access to Somerset Rd are also considered Piedmont properties for these same services.

The City Council has adopted several resolutions in the past allowing another jurisdiction to act as the lead agency for the issuance of planning and building permits, including for example, an Accessory Dwelling Unit at 1086 Annerley and demolition and new construction of a single-family residence at 30 Blair Place in 2019, both in the City of Piedmont.

Project

The project applicant seeks to construct a floor area addition to the existing residence and to reconstruct a swimming pool in the rear yard of a single-story, single-family home as shown in **Attachment B** (Project). Specifically, the scope of the Project consists of constructing a 769 square-foot addition, plus a new pool, landscaping, site walls, gate, walkways and fencing. The scope also includes a kitchen, family room, main entry and master suite remodel.

The majority of the existing home is located in Piedmont and fronts Somerset Road, but most of the proposed construction would take place in Oakland, including expanding the building footprint and associated site work.

ANALYSIS AND POLICY ALTERNATIVES

City of Oakland Zoning

Staff supports the request that the City of Oakland cede jurisdiction to the City of Piedmont, believing this advance the priorities of responsive, trustworthy government and holistic community safety. Ceding jurisdiction allows the City of Piedmont to continue dealing with permitting and also provision of 911 emergency and other municipal services at this property, as they have historically, without bureaucratic interruption.

The portion of the Property located in Oakland is within the RH-4 Hillside Residential Zone and S-9 Fire Safety Protection Combining Zone (RH-4/S-9), per the Oakland Planning Code.

Staff has reviewed the proposal and found that if the Project were to be processed in Oakland, then it would be considered according to the Small Project Design Review -Track 1 procedures in Planning Code Section 17.136.030 in order to comply with Oakland's land use regulations.

Analysis

The project applicant has requested that all required permits for land use and building inspections be processed by the City of Piedmont. Staff supports this request for the following reasons:

- The City of Piedmont has historically dealt with permitting at the Property;
- The existing home is fronting on a street served exclusively by the City of Piedmont;
- The majority of the existing, 2,844 sq. ft. home's footprint is located in Piedmont and only 209 sq. ft. of the proposed 769 square-foot addition is to be located in Oakland, if approved;
- The expansion of the existing roof would not adversely affect the Oakland properties to the rear in terms of solar access or privacy as those buildings are over 130 feet away and buffered at the lot line by mature trees and vegetation;
- Piedmont uses the same State mandated building codes as Oakland; and
- Piedmont will provide the residence with 911 emergency services, municipal waste removal services, access to Piedmont Unified School District schools, and other municipal services.

In order to efficiently consider the Project, the Cities of Oakland and Piedmont desire to enter into an MOA to memorialize the designation of Piedmont as the lead agency for the purposes of both land use approvals and building inspection of the Project, including but not limited to issuance of building and occupancy permits, and the provision of 911 and other municipal services to the Project, consistent with the terms and conditions contained in the draft MOA (***Attachment C***) and to ensure that Oakland will not be negatively impacted by the proposal:

- Piedmont will be the lead agency for all land use approvals regarding the Project;
- Piedmont will be responsible for building permit issuance, plan check, issuance of certificates of occupancy, building inspections and similar activities for the entire Project consistent with the appropriate procedures, fees, and standards of Piedmont;
- The Piedmont Fire Department will be responsible for the provision of emergency and public safety services to the Property, including those portions located in the City of Oakland; and
- Piedmont will continue to provide municipal waste removal services, access to the Piedmont Unified School District schools, and other municipal services to the Property.

Staff's analysis of this site and of the proposed development located within both city jurisdictions supports the creation of the MOA between the City of Oakland and the City Of Piedmont to allow the City Of Piedmont to process the Planning and Building Entitlements for the rear floor area addition and new swimming pool at 183 Somerset Rd, and adopting appropriate California Environmental Quality Act (CEQA) findings.

Policy Alternatives to Staff Recommendation

Alternative # 1 City Council declines staff's recommendation and requires both planning and building permits to be submitted to and approved by the City of Oakland.

Pros The City of Oakland would retain jurisdiction.

Cons The applicant would not be supportive of this proposal as this would require them to process the application and pay permit fees to both jurisdictions for the same Project. The applicant would consider this onerous and time consuming, and contrary to the state's goal of streamlining the permit process for housing projects.

Reason for not recommending The majority of the existing, 2,844 sq. ft. home's footprint is located in Piedmont, and only 209 sq. ft. of the proposed 769 square-foot addition is to be located in Oakland, if approved. Going through a dual permitting process would be confusing not only for the applicant in terms of requirements, but also for staff in terms of permit authority, plan-check and inspections. Neighbors to the rear within the City of Oakland will not be adversely affected by the Project due to the distance between buildings and intervening mature vegetation.

Alternative #2 City Council declines staff's recommendation and requires split jurisdiction during the permitting process for the Project, i.e., a planning permit would be processed in Oakland and building permits processed in Piedmont or vice versa.

Pros The City of Oakland would retain partial jurisdiction.

Cons This is inefficient, confusing, and is typically only done for larger, multi-family projects which would generate significant revenue in both cities.

Reason for not recommending The portion of the Project's addition in Oakland is only 209 sq. ft. Going through a bifurcated permitting process would be confusing for the applicant in terms of requirements, but also for staff where regulatory conflicts across jurisdictions may also be problematic. This option would require a more complicated MOA, inconsistent with the overall minor scope of the Project. Furthermore, as noted above, neighbors to the rear within the City of Oakland will not be adversely affected by the Project.

FISCAL IMPACT

Adoption of this resolution is expected to be revenue neutral. While fees would not be paid to the City, there would also be no cost to the City because Planning and Building Department staff would not work on the Project. Furthermore, there would be no ongoing impact on the City of Oakland's municipal services for the property.

PUBLIC OUTREACH / INTEREST

This item did not require any additional public outreach other than the required posting on the City's website.

COORDINATION

The City Attorney's Office and the City of Piedmont have worked closely with staff on the preparation of the MOA and have reviewed this staff report and resolution, as has the City's Budget Bureau.

SUSTAINABLE OPPORTUNITIES

Economic: There are minimal economic opportunities associated with this Project. The Project is not anticipated to provide a significant number of construction jobs, and these may or may not be for Oakland workers. The Property will remain a single-family home with a minor expansion of floor area and footprint.

Environmental: The Project will be required to meet modern standards for energy efficiency and green building.

Race & Equity: There are no race and equity impacts associated with this Project. The Property will remain a single-family home with a minor expansion of floor area and footprint.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

CEQA Guidelines exempt specific types of projects from environmental review. The following is an analysis citing the two CEQA exemptions that apply to this Project, both of which provide a separate and independent basis for CEQA clearance.

- **Section 15268 - Ministerial Projects:** Section 15268(b) of the CEQA Guidelines states that ministerial projects such as the issuance of building permits are exempt from CEQA.
- **Section 15301 – Existing Facilities:** Section 15301(e) of the CEQA Guidelines states that additions to existing structures that will not result in an increase of more than 50 percent of the floor area of the structures before the addition, or 2,500 square feet, whichever is less, is exempt from CEQA.

ACTION REQUESTED OF THE CITY COUNCIL

Staff Recommends That The City Council Adopt A Resolution Authorizing The City Administrator To Enter Into A Memorandum Of Agreement With The City Of Piedmont Establishing that the City Of Piedmont Will Process Planning and Building Entitlements For A Rear Floor Area Addition And New Swimming Pool At 183 Somerset Rd, A Property Located Within Both Jurisdictions, And Adopting Appropriate California Environmental Quality Act Findings.

For questions regarding this report, please contact Jamila Selby, Planner III, 510-238-2949.

Respectfully submitted,



WILLIAM A. GILCHRIST
Director, Planning & Building Department

Reviewed by:
Ed Manasse, Deputy Director
Bureau of Planning

Reviewed by:
Sarah Price, Planner IV
Bureau of Planning

Reviewed by:
Robert Merkamp, Zoning Manager
Bureau of Planning

Prepared by:
Jamila Selby, Planner III
Zoning Division, Bureau of Planning
Planning & Building Department

Attachments (3):

- A. Property Legal Description
- B. Project Plans
- C. Memorandum of Agreement

EXHIBIT "A"
Legal Description

For APN/Parcel ID(s): 048C-7181-049-00, 048C-7181-050-00 and 051-4825-017-00, 051-4825-018-00

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITIES OF PIEDMONT AND OAKLAND, COUNTY OF ALAMEDA, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

LOTS 10 AND 11, AS SAID LOTS ARE SHOWN ON THE MAP OF THE "UPPER PIEDMONT ESTATES, PIEDMONT AND OAKLAND, CALIFORNIA", FILED JUNE 28, 1928, IN BOOK 17 OF MAPS, PAGE 125, IN THE OFFICE OF THE COUNTY OF ALAMEDA.

Attachment C

MEMORANDUM OF AGREEMENT

This MEMORANDUM OF AGREEMENT (“MOA”), dated as of this ____ day of _____, 2024 (“Effective Date”), is entered into by and between the City of Piedmont, a municipal corporation (“Piedmont”) and the City of Oakland, a municipal corporation (“Oakland”), with reference to the following facts and circumstances:

RECITALS

A. The property located at 183 Somerset Rd (the “Property”) consists of two lots, and four tax parcels (APN No. 048C718104900, 048C718105000 and 051482501700, 051482501800), that straddles the Piedmont/Oakland border. The legal description and assessor parcel map for the Property is provided as **Exhibit A**, which is attached hereto and incorporated herein. The Property is generally bounded by single-family properties at 160-190 Somerset Road (Piedmont) across the street to the south a single-family property at 135 Somerset Road (Piedmont) to the west, a single-family property at 235 Somerset Road (Oakland) to the east and two single-family properties at 401 and 415 Pershing Drive (Oakland) to the north at the rear of the Property. The Property consists of 20,800 square feet, with approximately 12,158 square feet or fifty-eight percent (58%) of which is located in Oakland, and approximately 8,642 square feet or forty-two percent (42%) of which is located in Piedmont.

B. When considering properties intersected by the border between the Piedmont and Oakland, by long-standing arrangement between the cities, certain properties are considered Piedmont properties for the purposes of providing 911 and other municipal services, and certain properties are considered Oakland properties for the purposes of providing 911 and other municipal services. The Property is considered a Piedmont property eligible for Piedmont 911 services, municipal waste removal services, access to the Piedmont Unified School District schools, and other municipal services. The neighboring residences which have vehicular and pedestrian access to Somerset Road are also considered Piedmont properties for those same services.

C. Ana Lopez and Ricky Singh (“Applicants”) desire to remodel an existing single-family home located on the Property, which improvements include an approximately seven hundred and sixty nine square-foot addition and improvements split between two levels of the existing single-family home, as well as the addition of a new pool, landscaping, walkways, site walls, gate, trellis, and fencing on the Property (the “Project”).

D. The existing single-family home on the Property is located in both Piedmont and Oakland, and the proposed modifications are located within both jurisdictions.

E. The proposed work on City of Piedmont side includes, but not limited to: remodel of the main house including an addition on the north, south and east sides, addition of deck and trellis structures, and installation of new landscaped and hardscaped areas. The proposed work on City of Oakland side includes, but not limited to: remodel of the main house including an addition on the north and east sides, addition of a detached trellis structure, demolition of existing pool and construction of new pool, installation of

new landscaped and hardscaped areas, installation of new fencing and other related site improvements.

F. Both Piedmont and Oakland desire to see this site's use compatible with the surrounding properties and consistent with the cities' land use regulations and plans.

G. In order to efficiently consider the Project, the Oakland and Piedmont desire to enter into this MOA to memorialize the designation of Piedmont as the lead agency for the purposes of both land use approvals and building inspection of the Project, including but not limited to issuance of building and occupancy permits, and the provision of 911 and other municipal services to the Project, consistent with the terms and conditions contained in this MOA.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

I. Lead Agency under CEQA

Piedmont shall serve as Lead Agency for purposes of review under the California Environmental Quality Act ("CEQA").

II. Planning Approval Process

Piedmont will be the approval authority for all land use approvals regarding the Property, including but not limited to zoning approvals, variances, and issuance of conditional use permits or the like, to the extent any such approvals may be necessary. Piedmont shall apply its land use regulations, except as may be otherwise stated in this MOA.

- A. Applications. The Applicant has submitted an application for Design Review Permit to the Piedmont Planning Department for the Project. A notice regarding the project will be sent to the City of Oakland.
- B. Noticing. In undertaking noticing for actions by the City of Piedmont, all adjacent property owners, including properties located across the street, of the Property will be notified to ensure that neighbors from both jurisdictions are notified of the project.
- C. Conditions of Approval. The City of Piedmont will provide the City of Oakland a copy of the Conditions of Approval for the Project, if any, if the Project is approved.
- D. Ongoing Jurisdiction. Both Piedmont and Oakland understand that, by virtue of the proposed location of this Project, the Project, if approved, will be constructed both within Oakland and Piedmont. Consequently, except as otherwise provided in this MOA, the Property is subject to the laws of

both cities.

- Oakland acknowledges the continuing jurisdiction of the City of Piedmont, its Charter, and its Municipal Code within those portions of the Property located within the City of Piedmont and will not undertake any action or approval that will result in any violation of any of those laws. Piedmont acknowledges the continuing jurisdiction of the City of Oakland, its Charter, and Municipal Code within those portions of the Project located within the City of Oakland and will not undertake any action or approval that will result in any violation of those laws, except as may regard planning or building approvals for buildings on the Property. Piedmont shall have jurisdiction over planning and building approvals for the Property.
- The City of Oakland and the City of Piedmont both reserve the right to take such actions as necessary to enforce the laws, conditions or requirements within each city. Both cities agree to cooperate with the other city in any action undertaken to enforce any condition or requirement imposed on the Project.

III. Building and Permit Issues

- A. Building Permit and Plan Check. The City of Piedmont will be responsible for building permit issuance, plan check, issuance of certificates of occupancy, building inspections and similar activities for the entire Project consistent with the appropriate procedures, fees, and standards of Piedmont. Except as set forth elsewhere in this MOA, inspections of the Project will be conducted by the City of Piedmont. Prior to the issuance of a building permit, the City of Piedmont Fire Department shall review and approve the fire and life safety systems including, but not limited to, fire hydrants, fire sprinkler systems, fire alarm systems, fire department access, and water distribution systems. In addition, prior to the issuance of a building permit, the Piedmont Planning and Building Department shall review the building permit plans to ensure compliance with the approved Conditions of Approval, if any. The City of Piedmont retains the authority to issue future building permits for buildings on the Property located either partially or wholly within its jurisdiction.
- B. Building Address. The existing residence will retain the address of 183 Somerset Road, Piedmont.

IV. Emergency Service

The City of Piedmont Fire Department shall be responsible for the provision of emergency and public safety services to the Project, including those portions located in Oakland. Each City shall provide reciprocal response assistance as needed.

V. Fees

- A. Public Improvement Fees. The Applicant shall be responsible for paying any public improvement fees required for the Project in Piedmont, including sewer connection fees and sewer user fees as applicable. The Applicant shall be responsible for paying sewer connection fees to Piedmont for those units in the Project that discharge to the City of Piedmont sewer system. The sewer user fees are collected by East Bay Municipal Utility District as a part of monthly water bills.
- B. Other Fees. The Applicant shall be responsible for paying any fees required by Piedmont for staff review of encroachment permits, building permit plans, public improvement plans, and subdivision maps for consistency with Project approvals and city design standards.
- C. Not Comprehensive. The listing of specified fees in this Section V is not intended to serve as a comprehensive list of applicable fees from either jurisdiction.

VI. Indemnification

- A. No Liability To Third Parties. Nothing in this MOA shall be deemed to create rights or obligations in the Applicant or third parties not signatories to this MOA.
- B. Indemnification.
 - Oakland. Oakland shall defend, indemnify and hold harmless Piedmont from and against any and all liability, loss, expense (including reasonable attorneys' fees) or claims for injury or damage arising out of the performance of this MOA or arising from or connected to the approval process or relating to the Project, but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or the result of the negligent or intentional acts or omissions of Oakland, its officers, agents or employees.
 - Piedmont. Piedmont shall defend, indemnify and hold harmless Oakland from and against any and all liability, loss, expense (including reasonable attorneys' fees) or claims for injury or damage arising out of the performance of this MOA or arising from or connected to the approval process or relating to the Project, but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or the result of the negligent or intentional acts or omissions of Piedmont, its officers, agents or employees

VII. Miscellaneous Provisions

- A. Notice. For any action related to this MOA. each City shall be sent notices at the following addresses:

To Piedmont:

City of Piedmont
120 Vista Avenue
Piedmont, CA 94611
Attention: Kevin Jackson, Planning & Building Director
Phone: 510-420-3050 FAX: 510-658-3167
Email: kjackson@piedmont.ca.gov

With a copy to:

City of Piedmont
Attention: City Attorney
120 Vista Avenue Piedmont, CA 94611
Phone: 510-273-8780 FAX: 510-839-9104

To Oakland:

City of Oakland
Dept. of Planning and Building
250 Frank H Ogawa Plaza, Suite 2114, Oakland, CA 94612
Attention: Jamila Selby
Phone: (510) 238-2949
FAX: (510) 238-6538
Email: jselby@oaklandca.gov

With a copy to:

Office of the City Attorney
1 Frank H. Ogawa Plaza,
Floor Oakland, CA 94612
Attention. Brian P. Mulry
Phone: (510) 238-6839
FAX: (510) 238-6500
Email: bmulry@oaklandcityattorney.org

- B. Headings. The headings in this MOA are for reference and convenience of the parties and do not represent substantive provisions of this MOA.
- C. Governing Law. This MOA shall be governed by the laws of the State of California.
- D. Modifications. Any modification of or amendment to this MOA will be effective only if it is signed in writing by all parties.
- E. Counterparts. This MOA may be executed in any number of counterparts (including by fax, PDF, or other electronic means), each of which shall be deemed an original, but all of which shall constitute one and the same instrument.
- F. Project Permit File. This MOU shall be kept and maintained at all times in the Property's Planning Permit file with the City of Piedmont Planning and Building Department. The City of Oakland shall be provided a copy of this MOU upon request.

[Signatures on Following Page]

IN WITNESS WHEREOF, Piedmont and Oakland have each caused this MO to be duly executed on its behalf as of the Effective Date.

City of Piedmont

By: _____
 Name: _____
 Title: _____

Approved as to Form and Legality:

By: _____
 Name: _____
 Title: _____

City of Oakland

Authorized by Resolution No. _____
 Adopted _____

By: _____

Name: _____

Title: _____

Approved as to Form and Legality:

By: _____

Name: _____

Title: _____