

PIEDMONT PLANNING COMMISSION

Regular Meeting Minutes for Monday August 11, 2008

A Regular Session of the Piedmont Planning Commission was held August 11, 2008, 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 August 1, 2008.

CALL TO ORDER

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

ROLL CALL

Present: Commissioners Jim Kellogg, Melanie Robertston, Bobbe Stehr and Clark Thiel

Absent: Commissioner Jonathan Levine and Alternate Commissioner Michael Henn

Staff: City Planner Kate Black, Planning Technicians Sylvia Toruno, Gabe Baracker and Cyrus Dorosti and Recording Secretary Chris Harbert

City Council Liaison: Councilmember John Chiang

PUBLIC FORUM

There were no speakers for the public forum.

APPROVAL OF MINUTES

Resolution 18-PL-08

RESOLVED, that the Planning Commission approves as submitted its meeting minutes of July 14, 2008.

Moved by Thiel, Seconded by Robertson

Ayes: Kellogg, Robertson, Stehr, Thiel

Noes: None

Absent: Levine

REGULAR CALENDAR

The Commission considered the following items of regular business:

Remand of New Home Design Review 22 Valant Place

The City Planner reported that the City Council has remanded Mr. Mark Attarha and Ms. Nahid Nassiri's design review application for new home construction at 22 Valant Place back to the Commission for further consideration of the financial related conditions and instruments set forth in the Commission's February 11, 2008, conditional approval of the application (Resolution 461-DR-07). The Commission's conditional approval was appealed by several neighborhood residents and on April 7, 2008, the City Council heard the neighbors' appeal and remanded the matter back to the Commission with instructions that the reconsideration be strictly limited to the financial conditions and instruments intended to provide neighborhood protections. On June 4, 2008, the applicant (Mark Attarha), his attorney (David Bowie) and architect (Grier Graff) met with neighborhood appellants, the City Attorney and the City Planner to discuss issues related to the conditions' financial requirements and protections. Following this meeting, Trip Thomas of Arthur J. Gallagher Risk Management Services was contacted to provide specific premium costs for subsidence insurance and general liability insurance. In addition, the neighborhood appellants have submitted a letter dated June 10, 2008, from Kathleen Quenneville requesting additional

modifications to Project Conditions 6, 8 and 16. The City Attorney explained the City's remand process, noted that in case of a two-two vote tonight, the Commission's prior decision would stand and disagreed with the appellant's June 10 assertions that certain agreements were reached between the applicant and the appellants at the June 4th meeting. The City Attorney also recommended that the Commission consider including in the project's conditions of approval, a 24th condition requiring the applicant to provide advance notice of any change or cancellation in insurance coverage.

Written notice was provided to neighbors. **One negative response form** was received. **Correspondence:** the Commission acknowledged receipt of numerous e-mails and documentation submitted by both the applicants and the appellants.

Public testimony was received from:

David Bowie, Attorney for the applicant, reiterated his belief that the insurance requirements and protections contained in the original conditions of approval are not necessary nor warranted but stated his client's willingness to accept and comply with all of the original conditions of project approval. In addition, he concurred with adding the proposed 24th condition recommended by the City Attorney. Mr. Bowie discussed various legal issues with the Commission regarding insurance coverage issues and emphasized that three soils engineers have concluded that there is no evidence or history of subsidence on the applicant's property. He estimated the cost of project construction at \$250-\$300 per square foot.

Grier Graff, Project Architect, requested a 6 month time extension for obtaining a building permit, stressing that the neighborhood's appeal and recent changes in the country's financial markets have significantly delayed the project's original time-table. Mr. Graff estimated that the house as designed will probably cost around \$1 Million to construct.

Kathleen Quenneville, Thomas Kronmeyer and Garrick Lew outlined the reasons the neighborhood believes that the financial protections contained in the original conditions of approval are insufficient to provide the desired level of protections to neighboring properties, urged that Conditions #6 and #8 be combined to clarify that subsidence coverage is included under both conditions and that insurance coverage length of terms and amounts be increased. Mr. Lew also noted that a large boulder rolled down the hillside last winter that reinforces the neighborhood's concern and belief that subsidence is a valid issue.

Dean Johnson added that in addition to the boulder, slope slippage and downed trees on the applicant's property further indicate that there is a history of soil movement on the hillside.

The Commission explained to the neighbors the intent of Conditions #6 and #8, the Commission's understanding that Condition #6 does provide for subsidence coverage and the benefits of having one condition (#6) provide insurance coverage and the other (#8) provide cash bonds for addressing any damage claims both in the immediate and long term. The Commission further felt that the dollar amounts

cited in each condition, plus those contained in Condition #16 provide adequate protection for neighbors.

Commissioner Robertson emphasized that there is no evidence of soil instability or subsidence on the applicant's property as indicated by the conclusions of several professional reports, explained that "soil creep" and downed trees are not evidence of subsidence, stressed the considerable separation distance of neighboring homes to proposed construction and the lack of persuasive arguments that extraordinary protections or measures are required for this particular project. She cautioned neighbors not to insist that the applicant's property be treated as an unusual geotechnical hazardous zone because to do so would impact their own property and possibly lower neighborhood property values, especially since no evidence exists to justify such a designation. She reiterated that there is no evidence that the applicant's proposed construction represents a risky development and fair and reasonable protections have been included in the project's conditions of approval. The Commission concurred and agreed with the City Attorney's recommendation for an additional condition requiring notice of any change in insurance coverage and slight modifications to Conditions #6 and #8 to expressly clarify that subsidence coverage is included.

Resolution 19-PL-08

WHEREAS, on February 11, 2008, Mr. Mark Attarha and Ms. Nahid Nassiri were granted conditional design review approval to construct a new 2,333 sq. ft. single-family residence located at 22 Valant Place, Piedmont, California, which conditional approval was appealed by neighborhood residents; and

WHEREAS, the Piedmont City Council considered the neighborhood's appeal on April 7, 2008, and remanded the application back to the Planning Commission for further consideration of the financial related conditions and instruments set forth in the Commission's February 11, 2008, conditional approval of the application (Resolution 461-DR-07); and

RESOLVED, that after hearing any and all testimony and documentation submitted in connection with the remand, the Piedmont Planning Commission reaffirms that the proposal conforms with the criteria and standards of Section 17.20.9 of the Piedmont City Code as conditioned in Planning Commission Resolution 461-DR-07, with the following additional modifications (in italics) to the project approval conditions:

Condition #6 -- The Applicant shall provide adequate and appropriate insurance or bond or other financial vehicle, as approved by the Director of Public Works against damage to neighboring properties at 21 and 23 Valant Place, as well as 294, 298 and 300 Indian Road by any construction, excavation, and related work in any way involving the project, *including without limitation subsidence and erosion*. Such insurance, bond, or other financial vehicle to be in the amount of \$2,500,000.00 and with any conditions established by the Director of Public Works after consultation with the Applicant. If the Director of Public Works determines that obtaining any particular insurance would be extremely difficult for Applicant due to its lack of availability even at an increased cost,

the Director of Public Works may authorize an alternative method of providing equal protection to neighboring properties, including but not limited to partial coverage by Umbrella Insurance if that appears appropriate. Such insurance or any alternative method shall allow for claims to be made for up to two years after the issuance of the Certificate of Occupancy on Applicant's project. Any and all such insurance, bond or other financial vehicle shall specifically indicate that it covers damages to the above properties, and if such insurance is meant to also cover other potential damages, such as personal injuries or damages to other than the above named properties, any such further coverage shall be in addition to the \$2,500,000.00 earmarked for neighboring properties.

Condition #8-- Applicant shall provide a written guaranty signed by Applicant, Applicant's general contractor, and Applicant's structural engineer that there will be no subsidence or erosion to any neighboring properties caused in any way by Applicant's excavation, construction or any other activities relating to such project, and acknowledging that all work may be immediately stopped by City in the event of such subsidence or erosion until the City Engineer can be fully reassured that no further subsidence or erosion will occur from such neighboring properties. As an alternative, Applicant may post a cash bond or other financial vehicle acceptable to the Director of Public Works that will provide sufficient funds that will be immediately available to remedy any subsidence or erosion that may occur on neighboring properties *at the discretion of and* in an amount to be determined by the Director of Public Works, but which will not be less than \$500,000.00, *and acknowledging that all work may be immediately stopped by City in the event of such subsidence or erosion until the City Engineer can be fully reassured that no further subsidence or erosion will occur from such neighboring properties.* Such written guaranty, cash bond or similar financial vehicle shall not be released until the entire Project has been completed and "finalized" by the Chief Building Official.

Condition #24 – *The City shall be required to be provided at least 10 days prior written notice from the insurance company of the cancellation of or change to any insurance coverage set forth in these Conditions, specifically including but not limited to that required pursuant to Condition 6 hereof. Applicant shall immediately arrange for substitute insurance coverage to replace any such cancellation or change, subject to the approval of the City Attorney.*

Moved by Thiel, Seconded by Kellogg

Ayes: Kellogg, Robertson, Stehr, Thiel

Noes: None

Absent: Levine

**Fence Design Review
12 Bonita Avenue**

Mr. and Mrs. Lester Ellis are requesting fence design review to make front yard improvements, including to widen the on-grade front entry stairs, add a new handrail and step light to the stairs, construct a new retaining wall, and to reconstruct the existing columns.

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

Public testimony was received from:

Lester Ellis stated that the proposed improvements are intended for safety reasons.

The Commission, with the exception of Commissioner Thiel, supported application approval, agreeing that the improvements are an attractive solution for addressing the current safety issues associated with the stairs without significantly changing the existing streetscape. Commissioner Thiel felt that the project could be redesigned so as to avoid encroaching onto City property.

Resolution 202-DR-08

WHEREAS, Mr. and Mrs. Lester Ellis are requesting permission to make front yard improvements, including to widen the on-grade front entry stairs, add a new handrail and step light to the stairs, construct a new retaining wall, and to reconstruct the existing columns located at 12 Bonita Avenue, Piedmont, California, which construction requires design review; and

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

1. The exterior design elements (including but not limited to height, bulk, area openings, breaks in the façade, line and pitch of the roof, materials, arrangements of structures on the parcel, and concealment of mechanical and electrical equipment) are aesthetically pleasing as a whole and harmonious with existing and proposed neighborhood development in that it complies with Design Review Guidelines IV-1(a), IV-1(b), IV-2(a), IV-3 and IV-4(a).
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 significant change in existing conditions. The project replaces existing stairs. The improvements comply with Design Review Guidelines V-5(a) through (c).
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. In fact, pedestrian safety is enhanced by the proposed improvements to the stairs. The project complies with Design Review Guidelines IV-6 and V-8.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review application of Mr. and Mrs. Ellis for construction at 12 Bonita Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following condition:

- Prior to the issuance of a building permit, the applicants shall apply and pay for an encroachment permit for the construction of the new entry steps located in the City street right-of-way

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

Moved by Robertson, Seconded by Kellogg

Ayes: Kellogg, Robertson, Stehr

Noes: Thiel

Absent: Levine

**Variance and
Design Review
1139 Winsor Avenue**

Mr. John Perkins is requesting variance, design review and fence design review to make various front yard improvements, including: to construct a new fence and gate, add a new roof, install three new skylights, add a new garage door, construct a new wood trellis, add new wood siding and French doors at the rear, and make other decorative modifications. The requested variance is from Section 17.10.6 to allow the new garage roof overhang to extend to within 5'10" of the front property line in lieu of the code required minimum of a 20 ft. front yard setback.

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

Public testimony was received from:

John Perkins stated that the proposed improvements are intended to improve the exterior aesthetics of his 1925 vintage home, create a usable, attractive outdoor living space and provide safe, direct access from the garage to the house. He added that both the new windows and French doors will have true divided lights to match those existing. He also clarified that the maximum height of the proposed front yard fence will be 4 ft.

Jon Larson, Project Architect, discussed the proposed changes to the home's roof surface, noting that clay tiles are being added to those portions of the roof visible from the street and sidewalk to create a more Mediterranean architectural style, while the portions of the roof not visible to the general public will remain tar and gravel. He agreed that the color of the tar and gravel could be changed to match that of the clay tile.

The Commission voiced concern that the desired "Mediterranean" detailing elements are only being added to certain areas of the roof, creating an undesirable overall "tacked on" appearance. The Commission preferred that the entire roof have a uniform treatment to

comply with the City's Design Review Guidelines. Mr. Perkins emphasized that most of the roof is not visible from the street or neighboring property and he was reluctant to commit to replacing the entire roof at this time without knowing the cost. He inquired re the acceptability of deleting the proposed tile roof elements but the Commission noted that to do so would adversely impact the overall appearance of his other proposed changes to the home's façade. The Commission agreed that the requested variance is a pre-existing situation – both the home and garage are currently located within the setback.

Resolution 213-V-08

WHEREAS, Mr. John Perkins is requesting permission to make various front yard improvements, including: to construct a new fence and gate, add a new roof, install three new skylights, add a new garage door, construct a new wood trellis, add new wood siding and French doors at the rear, and make other decorative modifications located at 1139 Winsor Avenue, Piedmont, California, which construction requires variance; and

WHEREAS, a variance from the requirements of Chapter 17 of the Piedmont City Code is necessary in order to construct within the 20 ft. front 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 underlying lot and existing improvements present unusual physical circumstances, including but not limited to the fact that the existing house and garage are currently located within the setback. 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.
2. The variance is compatible with the immediately surrounding neighborhood and the public welfare because the proposed improvements will improve the quality and appearance of the home, enhance the home's entry and create an overall positive result for the neighborhood.
3. Accomplishing the improvement without a variance would cause unreasonable hardship in planning, design, or construction because no improvements to the existing home or garage can be made without variance.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the variance application of Mr. Perkins for the above variance at 1139 Winsor Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City.

RESOLVED FURTHER, that the approval of the Planning Commission/City Council and any conditions of that approval shall not

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

Moved by Kellogg, Seconded by Thiel

Ayes: Kellogg, Robertson, Stehr, Thiel

Noes: None

Absent: Levine

Resolution 213-DR-08

WHEREAS, Mr. John Perkins is requesting permission to make various front yard improvements, including: to construct a new fence and gate, add a new roof, install three new skylights, add a new garage door, construct a new wood trellis, add new wood siding and French doors at the rear, and make other decorative modifications located at 1139 Winsor Avenue, Piedmont, California, which construction requires design review; and

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

1. The exterior design elements (including but not limited to height, bulk, area openings, breaks in the façade, line and pitch of the roof, materials, arrangements of structures on the parcel, and concealment of mechanical and electrical equipment) are aesthetically pleasing as a whole and harmonious with existing and proposed neighborhood development in that, as conditioned, the proposed improvements are consistent in materials and architectural detail. The project complies with Design Review Guidelines II-1, II-2, II-3(a) and (b) in terms of architectural compatibility, consistent window and door treatments and consistency in architectural materials.
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 material change in the position of windows, doors or structure. The project complies with Design Review Guidelines II-2 and II-3.
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 the existing driveway or curb-cut. The front fence and gate articulate the entrance to the property and create separation between pedestrian and vehicle circulation. The proposed improvements comply with Design Review Guidelines II-3, II-7 and III-7.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review application of Mr. Perkins for construction at 1139 Winsor Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

1. Due to the scope and nature of the application, a construction management plan shall be developed and approved by staff prior to obtaining a building permit. Said plan shall be comprehensive while specifically addressing the duration of the project, construction hours, the staging of materials, and parking of worker vehicles to ensure the free flow of traffic along Winsor Avenue;
2. Compliance with Chapter 9 Article III of the Municipal Code, which governs the recycling of construction and demolition debris, will be required on all phases of this project. As a Covered project, this project is eligible to participate in the Incentive Program in which the City will provide one-half the cost of debris boxes provided by the City's franchised waste hauler and used exclusively for the purpose of removing recyclable construction and demolition debris;
3. The proposed wood windows, French doors and adjoining side lights shall be true divided lights and painted to match the existing wood windows and doors throughout the residence;
4. The proposed skylight flashing shall be painted to match the color of the adjacent roof;
5. The proposed garage door shall be electronically operated;
6. The entire roof on the second level of the home shall be finished with the same tile material that matches the proposed roof on the garage and the dormer that overhangs the front entrance. The actual material of the roof on the house shall be in keeping with the concept indicated on the submitted plans and shall be 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 Kellogg, Seconded by Thiel

Ayes: Kellogg, Robertson, Stehr, Thiel

Noes: None

Absent: Levine

**Proposed Trash
Enclosure Policy**

The City Planner submitted a proposed policy and Code amendment to enable residents to construct enclosures for their new trash, recycling and green waste carts without incurring design review fees. The intent of the policy and Code amendment is to preserve the beauty and architectural integrity of Piedmont properties by encouraging residents to properly store and screen their trash, recycling and green waste carts through the incentive of allowing enclosures that comply with the City's Design Review Guidelines and a recent revision to Chapter 9 of the Municipal Code adopted in compliance with the City's new contract for trash, recycling and green waste services with Richmond Sanitary Services, Inc. The policy and Code amendment are intended to make it as easy as possible for Piedmont residents to provide attractive screening of their carts in compliance with the new trash cart regulations of Chapter 9 without having to go through the standard building permit and design review process. The City Planner added that approximately 1/3 of Piedmont residents have opted for curb-side trash/recycling/green waste collection and planning staff has received numerous complaints regarding the unattractiveness of collection carts being left out on the street. The Commission concurred with the proposed policy and recommended approval of the proposed Code amendment to the City Council.

Resolution 20-PL-08

RESOLVED, that the Planning Commission recommends City Council adoption of the proposed Trash/Recycling/Green Waste Cart Enclosure Policy.

Moved by Thiel, Seconded by Kellogg

Ayes: Kellogg, Robertson, Stehr, Thiel

Noes: None

Absent: Levine

ADJOURNMENT

There being no further business, Chairman Stehr adjourned the meeting at 7:35 p.m.