

## **PIEDMONT PLANNING COMMISSION**

### **Regular Meeting Minutes for Monday March 10, 2008**

A Regular Session of the Piedmont Planning Commission was held March 10, 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 February 25, 2008.

#### **CALL TO ORDER**

Chairman Thiel called the meeting to order at 5:05 p.m. He announced that Agenda Items #10 and #11 (Variance, Design Review, Second Unit with Exceptions, 122 Olive Avenue) have been withdrawn from tonight's consideration at the request of the applicant.

#### **ROLL CALL**

Present: Commissioners Jim Kellogg, Melanie Robertston, Bobbe Stehr, Clark Thiel and Alternate Commissioner Michael Henn

Absent: Commissioner Jonathan Levine (excused)

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

#### **CONSENT CALENDAR**

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

##### **Variance 136 Ronada Avenue**

##### **Resolution 32-V-08**

WHEREAS, Mr. and Mrs. Eric Parker are requesting permission to construct a new entry porch and add new exterior lighting on the left (east) side of the residence located at 136 Ronada 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 left 4 ft. side yard setback; and

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

1. The underlying lot and existing improvements present unusual physical circumstances, including but not limited to the fact that the existing house is located within the setback and therefore cannot be modified without variance. 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 there is no change in existing building mass or scale.
3. Accomplishing the improvement without a variance would cause unreasonable hardship in planning, design, or construction because the

home's entry is currently located within the side yard setback and cannot be modified without variance.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the variance application of Mr. and Mrs. Parker for the above variance at 136 Ronada 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.

**Resolution 32-DR-08**

WHEREAS, Mr. and Mrs. Eric Parker are requesting permission to construct a new entry porch and add new exterior lighting on the left (east) side of the residence located at 136 Ronada 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. The proposed improvements comply with Design Review Guidelines II-2 and II-3(a) through (d) in terms of their integration, scale, mass and architectural compatibility with the existing residence and neighboring properties.
2. The design is appropriate, considering its effect on neighboring properties' existing views, privacy and access to direct and indirect light because the proposed addition of an overhang at the front door is minor in nature. There is no change to existing doors or windows. The project complies with Design Review Guideline II-6.
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. The project complies with Design Review Guideline II-7.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review application of Mr. and Mrs. Parker for construction at 136 Ronada Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following condition:

- 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 Ronada Avenue

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.

**Fence Design Review  
144 Wildwood Gardens**

**Resolution 42-DR-08**

WHEREAS, Mr. Jason Curliano and Ms. Madeline Buty are requesting permission to construct a new wood fence along the south and east property lines and to add a new gate at the southeast corner of the property located at 144 Wildwood Gardens, 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 the new fence replaces an existing fence of similar style and material. The project complies with Design Review Guideline IV-1.
2. The design is appropriate, considering its effect on neighboring properties' existing views, privacy and access to direct and indirect light because the height of the new fence is essentially the same as the fence it replaces.
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. The location of the new fence is the same as the old fence it replaces. The project complies with Design Review Guideline IV-6.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review application of Mr. Curliano and Ms. Buty for construction at 144 Wildwood Gardens, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following condition:

- The approved plans are those submitted on February 26, 2008, after neighbors were notified of the project and the plans were available for public review.

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

**Design Review  
83 SeaView Avenue**

**Resolution 43-DR-08**

WHEREAS, Messrs. Philip Harley and Mark Kalend are requesting permission to demolish chimney flues and trellis at the northeast corner of the house, replace and modify windows throughout the residence, and replace the wood siding and shutters on the house located at 83 Sea View 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 the proposed exterior changes are almost imperceptible and maintain the mid-century aesthetic of the original house. The proposed improvements comply with Design Review Guidelines II-3, II-3(a) through (c) in terms of their integration, scale, mass and architectural compatibility with the existing residence.
2. The design is appropriate, considering its effect on neighboring properties' existing views, privacy and access to direct and indirect light because the proposed new windows are essentially in the same

location as the existing windows they replace. The project complies with Design Review Guideline II-7.

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.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review application of Messrs. Harley and Kalend for construction at 83 Sea View 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 Sea View 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 permits issued on or after February 1, 2007. Applicants of covered and non-covered projects are 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 Playstructure located in the rear yard shall be subject to Administrative Design Review with affected adjacent neighbor sign-off.

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

**Design Review  
133 Caperton Avenue**

**Resolution 45-DR-08**

WHEREAS, Ms. Jennifer Rainin is requesting permission to make various rear yard improvements, including: to replace an existing pool, install a new hot tub, construct a new terrace and stairs, add new planters, construct two new water features, install a new built-in barbecue, add exterior lighting and make other hardscape improvements located at 133 Caperton 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 the proposed improvements comply with Design Review Guidelines II-1, II-3 and II-5. The proposed improvements are compatible in scale and architectural style and well integrated into the existing house.
2. The design is appropriate, considering its effect on neighboring properties' existing views, privacy and access to direct and indirect light. The proposed project has little visual impact and in fact improves neighbor views because of the landscaping plan. The project complies with Design Review Guidelines II-2, II-5(a) and II-6(b).
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. The project complies with Design Review Guidelines II-5(a) and II-6(b).

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review application of Ms. Rainin for construction at 133 Caperton 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 Caperton 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 permits issued on or after February 1, 2007. Applicants of covered and non-covered projects are 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 door shall be painted to match the remaining doors throughout the residence.

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 Stehr, Seconded by Kellogg  
Ayes: Kellogg, Robertson, Stehr, Thiel, Henn  
Noes: None  
Absent: Levine

**PUBLIC FORUM**

There were no speakers for the public forum.

**APPROVAL OF MINUTES**

**Resolution 5-PL-08**

RESOLVED, that the Planning Commission approves as submitted its meeting minutes of February 11, 2008.

Moved by Kellogg, Seconded by Stehr

Ayes: Kellogg, Robertson, Stehr, Thiel, Henn  
Noes: None  
Absent: Levine

**REGULAR CALENDAR**

The Commission considered the following items of regular business:

**Conditional Use Permit  
1337 Grand Avenue**

Mr. Patrick Ellwood, on behalf of Ascend Analytics, is requesting a conditional use permit to locate a new software company in Suite 202, an 875 sq. ft. office space on the second level of the multi-tenant building at 1337 Grand Avenue. The requested use proposes:

- *Days & Hours of Operation:* 8:30 a.m.-5:00 p.m., Monday through Friday;
- *Number of On-Site Parking Spaces:* 2 but these are not needed. Both employees will walk to work – no customers come to this office;
- *Maximum number of People on site at any one time:* 2
- *Type & Number of Personnel:* A principal analyst and a senior software engineer
- *Lease Term:* 5 years

This office space was formerly occupied by Brandon Bickel who operated a book publishing company. The space has been vacant since 2005.

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

**Public testimony** was received from:

David Bowie, Mr. Ellwood's legal representative, emphasized that the proposed tenant represents a very low intensity use of the office space (no customers come to the site), the tenant is a Piedmont resident who

intends to walk to his office (the other employee also intends to walk to work) and the term of the proposed lease is 5 years. He noted that while currently only two employees are proposed for the 3-office suite, it is possible that a third employee may be added later as the business grows. He requested that the CUP be conditioned so that a third employee can be added without requiring permit modification.

The Commission agreed that the proposed use is appropriate for the site, its low intensity use will have no impact on the surrounding neighborhood and filling a long-term vacancy benefits the community. The Commission agreed that the future addition of a third employee would be acceptable under the current CUP application since it is a three-office business suite and two off-street parking spaces are available for this use when none or only one parking space is proposed to be utilized under the current application.

**Resolution 36-CUP-08**

WHEREAS, Ascend Analytics is requesting a Conditional Use Permit to operate a software development and consultant business in Suite 202 of the existing commercial office building at 1337 Grand Avenue, Piedmont, California, and;

WHEREAS, the Piedmont Planning Commission has reviewed the application, the staff report, and any and all other documentation and testimony submitted in connection with the application and has visited the subject property;

The Piedmont Planning Commission makes the following findings:

1. The use is of benefit to Piedmont residents. Energy analysis is becoming more important to the City as a whole.
2. The use will be properly related to other land uses and transportation and service facilities in the vicinity. The proposed use is located within a commercially zoned office building.
3. Under all the circumstances and conditions of the particular case, the use will not have a material adverse effect on the health or safety of persons residing or working in the vicinity. There will be no toxic materials on the premises. The proposed use is an analytical software company with little or no noise impacts.
4. The use will not be contrary to the standards established for the zone in which it is to be located. It is located in Zone D within an existing commercial office building.
5. The use will not contribute to a substantial increase in the amount of noise or traffic in the surrounding area. The proposed use involves only two employees who will walk to the office. There will be no customer visits to the office.
6. The use is compatible with the General Plan and will not adversely affect the character of the surrounding neighborhoods or tend to adversely affect the property values of homes in the surrounding neighborhoods. The proposed use is within an established commercial zone of the City. Residential properties surround the existing office



building located in this commercial zone of the City and these residences appear to be retaining their value

7. Adequate provision for driveways to and from the property has been made; facilities for ingress and egress from secondary streets instead of arterials, where possible, have been made; provision for parking in compliance with this Chapter 17 has been made, together with sufficient agreements to enforce the carrying out of such plans as may be required by the Council. Two off-street parking spaces are available for this use.

8. The plans conform to all other laws and regulations of the City, provided, however, that the Council shall have the right to require front, rear and side yard setbacks greater than those otherwise provided in the laws and regulations of the City if the Council finds that such larger front, rear and side yard areas are necessary to provide for the health, safety and general welfare of the residents of Piedmont in accordance with its zoning laws.

RESOLVED, that in consideration of the findings and facts set forth above, the Piedmont Planning Commission recommends approval by the City Council of the application for a conditional use permit by Ascend Analytics for property located at 1337 Grand Avenue, Piedmont, subject to the following conditions:

1. The approved plans include information submitted on February 27, 2008, after the notice to neighbors was mailed and the plans were available for public review;
2. The term of the conditional use permit shall be for a period of 5 years;
3. The addition of a third employee is permitted during the term of this conditional use permit.

Moved by Stehr, Seconded by Kellogg

Ayes: Kellogg, Robertson, Stehr, Thiel, Henn

Noes: None

Absent: Levine

**Conditional Use Permit  
1345 Grand Avenue**

The Alameda County Dental Society is requesting a conditional use permit to continue to operate in Suite 102 of 1345 Grand Avenue an existing professional, non-profit organization representing dentists in Alameda County. The conditioned use proposes:

- *Days & Hours of Operation:* 9:00 a.m.-5:00 p.m., Monday through Friday;
- *Number of On-Site Parking Spaces:* 1;
- *Maximum number of People on site at any one time:* 1
- *Type & Number of Personnel:* 1
- *Lease Term:* 5 years

The Dental Society was originally granted a CUP in 1993, which was last renewed in 1999.

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

**Public testimony** was received from:

David Bowie, Mr. Ellwood's legal representative, stated that the current tenant has occupied the office space since 1993 and there is no proposed change in the existing use. In fact, the hours of business operation have been slightly reduced from that previously approved. He added that it is anticipated that the Dental Society will renew its lease for another 5-year term when its current lease expires. Therefore, he requested that the term of the CUP be for 10 years to avoid the necessity of renewing the CUP.

The Commission agreed that a 10-year permit term for this long-time tenant is appropriate.

**Resolution 38-CUP-08**

WHEREAS, Alameda County Dental Society is requesting a Conditional Use Permit to continue to operate a professional, non-profit organization representing dentists in Alameda County in Suite 102 of the existing commercial office building at 1345 Grand Avenue, Piedmont, California, and;

WHEREAS, the Piedmont Planning Commission has reviewed the application, the staff report, and any and all other documentation and testimony submitted in connection with the application and has visited the subject property;

The Piedmont Planning Commission makes the following findings:

1. The use is of benefit to Piedmont residents. The proposed use has occupied the current office space for many years and serves area dentists, many of whom are Piedmont residents.
2. The use will be properly related to other land uses and transportation and service facilities in the vicinity. It is a single-user office and compliments the other uses in the office building and in the area.
3. Under all the circumstances and conditions of the particular case, the use will not have a material adverse effect on the health or safety of persons residing or working in the vicinity. There is no change in the existing tenancy that has been located in this site for more than 10 years.
4. The use will not be contrary to the standards established for the zone in which it is to be located. It is an office use in an existing office building located within Zone D.
5. The use will not contribute to a substantial increase in the amount of noise or traffic in the surrounding area. The proposed use has occupied the current office space for ten years. There is adequate off-street parking allocated for this use and the use involves very limited client visits to the site. There is adequate guest parking available within the building's parking lot.

6. The use is compatible with the General Plan and will not adversely affect the character of the surrounding neighborhoods or tend to adversely affect the property values of homes in the surrounding neighborhoods. The proposed use is consistent with its location within commercially zoned property.

7. Adequate provision for driveways to and from the property has been made; facilities for ingress and egress from secondary streets instead of arterials, where possible, have been made; provision for parking in compliance with this Chapter 17 has been made, together with sufficient agreements to enforce the carrying out of such plans as may be required by the Council. The proposed use is located within an existing commercial building.

8. The plans conform to all other laws and regulations of the City, provided, however, that the Council shall have the right to require front, rear and side yard setbacks greater than those otherwise provided in the laws and regulations of the City if the Council finds that such larger front, rear and side yard areas are necessary to provide for the health, safety and general welfare of the residents of Piedmont in accordance with its zoning laws.

RESOLVED, that in consideration of the findings and facts set forth above, the Piedmont Planning Commission recommends approval by the City Council of the application for a conditional use permit by Alameda County Dental Society for property located at 1345 Grand Avenue, Piedmont, subject to the following condition:

- The term of the Conditional Use Permit shall be 10 years

Moved by Kellogg, Seconded by Stehr

Ayes: Kellogg, Robertson, Stehr, Thiel, Henn

Noes: None

Absent: Levine

**Variance**  
**150 LaSalle Avenue**

Mr. Gordon Linden is requesting variance to make various changes to the interior of the barbecue house including the addition of a full bathroom. The requested variance is from Section 17.16 to allow a proposed residence with 5 rooms eligible for use as bedrooms with only two conforming off-street parking spaces in lieu of the code required minimum of three such spaces.

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

**Public testimony** was received from:

Robert Wolfe, Project Architect, described the existing BBQ house that has existed on the property for probably 50 years – essentially original construction. The proposed addition of a bathroom is desired to make the use of the building more convenient – it is used as a TV/Rec room. The property has a 3-car garage that accommodates the parking of three vehicles. However, the interior width of the garage is slightly smaller than the width dimension specified in the code. No exterior changes to the BBQ house are proposed.

The Commission, with the exception of Chairman Thiel, supported variance approval, agreeing that in all practicality the BBQ house is not suitable as a second unit and that the property currently has a 3-car garage that accommodates the parking of three vehicles. Therefore, the parking variance required is essentially a technicality in terms of the code's width dimensions. The Commission majority agreed that widening the garage two feet, to comply with code requirements would constitute an unreasonable construction hardship. Chairman Thiel felt that the BBQ house could be easily converted to a second unit by a future owner and that a full bathroom is not required for the applicant's convenience. He felt that a half-bath (no shower) would satisfy the need for convenience while also precluding the possibility that this structure would be used as a second unit.

**Resolution 40-V-08**

WHEREAS, Mr. Gordon Linden is requesting permission to make various changes to the interior of the barbecue house including the addition of a full bathroom located at 150 LaSalle 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 add a room eligible for use as a bedroom without providing conforming parking; and

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

1. The underlying lot and existing improvements present unusual physical circumstances, including but not limited to the fact that the property has a 3-car garage, albeit its width is 2 ft. less than that required by code. 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 existing 3-car garage does accommodate the parking of three vehicles and there is no on-street parking congestion in the neighborhood – there is additional parking available on the applicant's driveway and this section of LaSalle Avenue is quite wide. The BBQ structure exists, there are no changes to the exterior of this building and no changes to the existing parking situation on the property.
3. Accomplishing the improvement without a variance would cause unreasonable hardship in planning, design, or construction because to add two feet to the width of the existing garage to make it conforming to code dimension requirements would involve major construction and engineering hardship. The existing garage accommodates the parking of three cars.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the variance application of Mr. Linden for the above variance at 150 LaSalle Avenue, Piedmont,

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

- The building official shall record a Notice that this BBQ structure can be used as a guest bedroom but not as an independent living unit.

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 Stehr, Seconded by Kellogg

Ayes: Kellogg, Robertson, Stehr, Henn

Noes: Thiel

Absent: Levine

**Conditional Use Permit  
335 Highland Avenue**

Mr. Chad Olcott and Ms. Laura Pochop, on behalf of Mulberry's Market, is requesting modification of their existing CUP to add an exterior barbeque grill service in the parking lot on Thursday, Friday, Saturday & Sunday evenings in the spring and summer and to add 2 to 4 additional benches for customer seating outside (no parking spaces are proposed to be used for this purpose).

Written notice was provided to neighbors. **Thirty-six affirmative, eight negative response forms** were received.

**Public testimony** was received from:

Chad Olcott stated that numerous customers have requested that he provide BBQ meals *to go* during warm weather and add two to four benches in front of the store. He described the proposed BBQ grill operation, noting that the gas (not charcoal) grill would be utilized from April 1 through November 1, 2:00 p.m. to 8:00 p.m. on Thursdays through Sundays. The grill would be located on the store's loading area in the parking lot when in use and stored in the alley when not in use. The benches are not associated with the BBQ operation and would be permanently bolted to the store's sidewalk on either side of the main entry. Mr. Olcott responded to issues raised by the Commission that were cited in opposition letters. Such issues involved odors, pedestrian safety, traffic flow as well as food health and safety precautions related to the outdoor BBQ operation. Mr. Olcott explained how these issues would be mitigated. He emphasized that the addition of the BBQ would increase the financial viability/success of his new market operation as well as satisfy the needs and desires of his Piedmont customers.

The Commission supported the application in concept, agreeing that the BBQ operation should be approved on a trial basis to assess its

potential impacts on neighboring residents. The Commission supported a two-season trial period in recognition of the financial outlay required to purchase the gas grill and awning. In voicing support for the application, the Commission acknowledged that Mulberry's Market has been a wonderful addition to the community, its offering of a wider array of food products will benefit residents and outdoor BBQ services are a common practice by the better markets in the area.

**Resolution 41-CUP-08**

WHEREAS, Mr. Chad Olcott and Ms. Laura Pochop are requesting modifications to their existing Conditional Use Permit to operate Mulberry's Market at 335 Highland Avenue, Piedmont, California, to add an exterior barbeque grill service in the parking lot on Thursday, Friday, Saturday & Sunday evenings in the spring and summer and to add 2 to 4 additional benches for customer seating outside (no parking spaces are proposed to be used for this purpose); and

WHEREAS, the Piedmont Planning Commission has reviewed the application, the staff report, and any and all other documentation and testimony submitted in connection with the application and has visited the subject property;

The Piedmont Planning Commission makes the following findings:

1. The use is of benefit to Piedmont residents. It is the goal of Mulberry's Market to provide a high quality retail market to serve the needs of Piedmont residents and families. The addition of grilled food will benefit Piedmont residents.
2. The use will be properly related to other land uses and transportation and service facilities in the vicinity. The Mulberry's Market will continue to operate in the same enclosed space that it currently occupies. No additional parking will be generated.
3. Under all the circumstances and conditions of the particular case, the use will not have a material adverse effect on the health or safety of persons residing or working in the vicinity. The health and safety of food preparation have been addressed via the temporary awning over the grill. There will be no additional impact on the surrounding neighborhood as the grilling will occur on the service site that is part of the Mulberry Market's existing use of the property.
4. The use will not be contrary to the standards established for the zone in which it is to be located. Mulberry's Market has a conditional use permit to operate on the property – it is a retail operation in Zone D.
5. The use will not contribute to a substantial increase in the amount of noise or traffic in the surrounding area. The addition of a grill is a secondary use of Mulberry's Market. The customers that go to the market now are accommodated by the property's parking lot. As conditioned, the grill component of the market's operation will not have a significant or material impact on the noise or traffic flow in and out of Mulberry's Market.
6. The use is compatible with the General Plan and will not adversely affect the character of the surrounding neighborhoods or tend to

adversely affect the property values of homes in the surrounding neighborhoods. The primary use of the property is already a retail market operation and the addition of a temporary grill will not adversely impact the character or value of neighboring properties.

7. Adequate provision for driveways to and from the property has been made; facilities for ingress and egress from secondary streets instead of arterials, where possible, have been made; provision for parking in compliance with this Chapter 17 has been made, together with sufficient agreements to enforce the carrying out of such plans as may be required by the Council. The retail market operation already has dedicated use of property driveways and pedestrian access and there will be no change in existing ingress/egress to the property.

8. The plans conform to all other laws and regulations of the City, provided, however, that the Council shall have the right to require front, rear and side yard setbacks greater than those otherwise provided in the laws and regulations of the City if the Council finds that such larger front, rear and side yard areas are necessary to provide for the health, safety and general welfare of the residents of Piedmont in accordance with its zoning laws. The proposed grill is not permanent construction and the regulation for health, safety and food preparation is the responsibility of the market owners.

RESOLVED, that in consideration of the findings and facts set forth above, the Piedmont Planning Commission recommends approval by the City Council of the application for a conditional use permit by Mr. Olcott and Ms. Pochop, on behalf of Mulberry's Market, for property located at 335 Highland Avenue, Piedmont, subject to the following conditions:

1. Except as modified under this request, the terms and conditions of the original conditional use permit (Application #05-0404) shall remain;
2. The term of this conditional use permit modification shall be two years – expiring November 1, 2009;
3. The gas-fired BBQ grill operation is permitted from April 1 through November 1 on Thursdays through Sundays from 2:00 p.m. to 8:00 p.m.;
4. The BBQ grill and canopy shall be removed from the service area and stored when not in use;
5. The location and operation of the BBQ grill shall be sited so as to direct pedestrian approach via the store's sidewalk and shall not impede the traffic flow of the store's parking lot;
6. Two additional benches may be added to the store front adjacent to the solid panels at the main entry. Said benches shall be bolted to the ground and be located so as not to impede pedestrian circulation along the sidewalk.

Moved by Kellogg, Seconded by Stehr

Ayes: Kellogg, Robertson, Stehr, Thiel, Henn

Noes: None

Absent: Levine

**General Plan Update**

The City Planner requested the Commission to schedule a General Plan Community Work Session Meeting to discuss *community design*, *historic preservation* and *parks and recreation issues*. The Commission agreed to hold the work session on March 31 at 6:30 p.m. The public was encouraged to attend this work session meeting.

**ADJOURNMENT**

There being no further business, Chairman Thiel adjourned the meeting at 6:45 p.m.