

# PIEDMONT PLANNING COMMISSION

## Regular Meeting Minutes for Monday March 9, 2009

A Regular Session of the Piedmont Planning Commission was held March 9, 2009, 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 27, 2009.

### CALL TO ORDER

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

### ROLL CALL

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

Staff: Assistant Planner Kevin Jackson, Planning Technicians Sylvia Toruno, Gabe Baracker and Manira Sandhir and Recording Secretary Chris Harbert

City Council Liaison: Councilmember John Chiang

### CONSENT CALENDAR

There was no consent calendar.

### PUBLIC FORUM

There were no speakers for the public forum.

### APPROVAL OF MINUTES

#### **Resolution 7-PL-09**

RESOLVED, that the Planning Commission approves as submitted its meeting minutes of February 9, 2009.

Moved by Henn, Seconded by Robertson

Ayes: Kellogg, Robertson, Stehr, Henn

Noes: None

Recused: Levine, Thiel

Absent: None

### REGULAR CALENDAR

The Commission considered the following items of regular business:

#### **Conditional Use Permit & Design Review 340 Highland Avenue**

Piedmont Valero is requesting a Conditional Use Permit and Design Review for retroactive approval of the installation of television monitors on top of the gas pumps and the installation of a vapor recovery system on top of an existing pole along Highland Way. The Conditional Use Permit is a continuation of the existing use as a gasoline service and automobile service and repair facility. The vapor recovery system installation is required by the California Environmental Protection Agency Air Resources Board. The requested terms of the CUP are:

*Days & Hours of Operation:* Monday-Friday: 7 a.m. to 7 p.m.; Saturdays: 8 a.m. to 4 p.m.; Sundays: Closed. Gasoline pumps available 24 hrs/day for credit card use;

*Number of On-Site Parking Spaces:* 8 spaces for staff and visitors;

*Types of Personnel:* 1 manager; 1 mechanic; 1 cashier

*TV Monitor Hours:* monitors are turned off from 10 p.m. to 6 a.m. daily;

*Requested CUP Term: 10 years*

Written notice was provided to neighbors. **One affirmative, two negative response forms** were received. **Correspondence** was received from: Piedmont Community Church Petition in opposition to the TV monitors.

**Public testimony** was received from:

Reverend Bill McNabb of the Piedmont Community Church voiced Church staff opposition to the TV monitors above the gas pumps. He noted that the monitors were installed without neighborhood notice or City approval and the operation is causing visual and audio pollution that is both a nuisance and irritant.

Simon Ho, the new station owner, stated that he assumed ownership of the Valero Station on January 16 and the TV monitors were already in place. He emphasized that the TV monitors generate an important revenue stream for the station and without such additional revenue, he was uncertain whether the station's operation can remain profitable. He stated his willingness to discuss with the TV service providers whether the volume and hours of operation can be reduced to lessen the monitors' impact.

The Commission voiced opposition to the presence and use of the TV monitors, citing the following reasons: (1) the monitors are in essence illuminated billboards which are in violation of the City's non-residential sign ordinance; (2) monitor approval could set an undesirable precedent in the Civic Center area, whereby other businesses, such as banks and real estate offices, could install TV screens in their windows to advertise service and products; (3) the noise from TV monitor operation in the evenings and on Sundays is quite noticeable to pedestrians passing by and as such is a potential distraction/traffic hazard; (4) it is the Commission's belief that the TV monitors fall under the definition of "signage" under the City's sign ordinance and the Commission further finds that this type of signage is unacceptable; and (5) the illumination from the TV monitors extends beyond the property's boundaries and as such is in violation of Section 17.20.4 of the City Code related to light pollution.

As to the proposed vapor recovery system (EVR), the Commission acknowledged that such systems are required by California law. However, given its large size, the Commission insisted that existing landscaping in the proposed location of the system be retained to help screen the equipment from view. The Commission also agreed that name of the equipment manufacturer, printed in large letters, constitutes another "sign" and such signage is not required by the California Environmental Protection Agency nor permitted under the City's signage ordinance. The Commission also voiced its preference that if smaller size recovery systems become available during the 10-year term of the CUP, the applicant install such a smaller system. The Commission requested that in 5 years, the applicant either install a smaller sized system or certify to the City that such systems are not available.

**Resolution 184-DR-08**

WHEREAS, Piedmont Valero is requesting permission for retroactive approval of the installation of television monitors on top of the gas pumps and proposes to install a vapor recovery system on top of an existing pole located at 340 Highland Avenue, Piedmont, California, which construction requires design review; and

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

With regard to the Vapor Recovery System: that the proposal conforms with the criteria and standards of Section 17.20.9 of the Piedmont City Code, subject to the following conditions:

1. the new EVR canister and associated equipment shall be painted to match the support pole and adjacent vent pipes;
2. sufficient landscaping be provided at all times to screen as much as possible the EVR canister and equipment from public view

With regard to the Television Monitors: that the proposal does not conform with the criteria and standards of Section 17.20.9 of the Piedmont City Code:

1. The exterior design elements are not aesthetically pleasing as a whole and harmonious with the existing gas station and neighborhood development.
2. The design is not appropriate, considering its effect on neighboring properties' existing views, privacy and access to direct and indirect light because there are no other television monitor displays in the Civic Center, either for residential or commercial use. In addition, the operation of the television monitors has an adverse audio and visual impact on the surrounding neighborhood.
3. The safety of residents, pedestrians, and vehicle occupants and the free flow of vehicular traffic could be adversely affected because the operation of the television monitors could be considered a distraction.

RESOLVED FURTHER, that the Commission finds that the proposed television monitors fall within the definition of a "sign" under Section 17.19 of the City Code and thus the applicant should have submitted an application for non-residential sign design review. However, the Commission has determined that the television monitors do not comply with the City's sign ordinance and therefore, a non-residential sign design review application would be denied.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves, as conditioned above, the installation of a vapor recovery system on top of an existing pole located on Highland Way and denies retroactive approval of the installation of television monitors on top of the gas pumps as set forth in the design review application of Piedmont Valero for construction at

340 Highland Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City.

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

Moved by Levine, Seconded by Thiel

Ayes: Kellogg, Levine, Robertson, Stehr, Thiel

Noes: None

Absent: None

**Resolution 184-CUP-08**

WHEREAS, Piedmont Valero is requesting a Conditional Use Permit to operate a gasoline and automobile service and repair facility at 340 Highland 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 gas station has a long history of operation in Piedmont.
2. The use will be properly related to other land uses and transportation and service facilities in the vicinity.
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. This is a continuation of an existing use, with a long history of operation in Piedmont.
4. The use will not be contrary to the standards established for the zone in which it is to be located.
5. The use, as conditioned to eliminate the operation of television monitors above the gas pumps, will not contribute to a substantial increase in the amount of noise or traffic in the surrounding area.
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. This is a continuation of an existing use that has operated at this site for many years.

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. There is provision for on-site parking that is sufficient for the business operation.

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 Piedmont Valero for property located at 340 Highland Avenue, Piedmont, subject to the following conditions:

1. The term of the approval shall be ten years;
2. The provisions of the Conditional Use Permit shall be:
  - The hours and days of operation shall be 7 a.m. to 7 p.m., Monday thru Friday; 8 a.m. to 4 p.m. on Saturdays; closed Sundays; and gasoline pumps available 24/hrs/day for credit card use;
  - There shall be eight on-site parking spaces for staff and visitors;
  - The maximum number of people using the business site at one time shall not exceed 20, including employees;
  - Types of staff/personnel shall include managers, mechanics and cashiers; and
  - After 5 years, the Applicant shall either install a smaller sized vapor recovery system or certify to the City that no such system is available. If the vapor recovery system is replaced, such replacement shall be subject to staff review and approval.

Moved by Levine, Seconded by Thiel

Ayes: Kellogg, Levine, Robertson, Stehr, Thiel

Noes: None

Absent: None

**Variance and  
Design Review  
47 Jerome Avenue**

Mr. and Mrs. Moon Lau are requesting variance and design review for retroactive approval for the enclosure of a front entry porch; modifications to the existing roof; addition of a new deck atop the existing garage; installation of new vinyl windows and wood front door; replacement of an existing garage door; construction of new entry stairs and wrought-iron guardrail; and other ornamental modifications to the residence. The requested variances are from: (1) Section 17.10.4 to allow an impervious surface coverage of 90.7% in lieu of the code permitted maximum of 70%; (2) Section 17.10.6 to allow the new

porch enclosure to extend to within 6 ft. of the front property line in lieu of the code required minimum of a 20 ft. front yard setback; and (3) Section 17.10.7 to allow the new parapet roof modification to extend to within 3'6" of the left side property line in lieu of the code required minimum of a 4 ft. side yard setback. A similar application was denied without prejudice on January 12, 2009.

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

**Public testimony** was received from:

Eric Lau and Project Manager John Peng explained how the project was redesigned in response to the January meeting. In response to Commission questioning, Mr. Peng acknowledged that additional existing hardscape in the rear yard could be removed and Mr. Lau explained his attempts to obtain a fencing agreement with the absentee owner of the adjacent property (1301 Oakland Avenue). Mr. Lau stressed that there will be no change in the pre-existing situation between the two properties in terms of fence location. However, it was acknowledged that there is disagreement between the applicant and his neighbor as to the exact location of the right side property line and on whose property the existing fence is located.

The Commission was split in its support of application approval. Commissioners Levine and Thiel opposed approval at this time because of too many outstanding issues to be resolved. In particular, they noted: (1) the absence of either a right property line survey or fencing agreement between the applicant and his neighbor to insure that proposed construction is on the applicant's property; (2) the fact that per applicant testimony, additional rear yard hardscape could be removed, thus reducing the amount of impervious surface in excess of that permitted by code – the proposed 90% of impervious surface on the property is unacceptable; (3) the fact that the existing front retaining wall is unnecessary and could be replaced with a 4 ft. high wood fence to eliminate a wall of concrete in the front; (4) a concern that the proposed vinyl windows are not truly paintable per code requirements and the absence of information indicating the long-term durability and quality of these windows; and (5) a preference that a comprehensive rather than piece-meal approach be undertaken with regard to property improvements to avoid hamstringing the Commission or applicant in case new information comes to light later. The remaining Commissioners felt that the application was responsive to January requests and could be approved, subject to conditions. The majority noted that: (1) all the windows match to create a cohesive look required by the Window Policy and the coating color scheme can be changed per submitted documentation; (2) the left and front yard setback variances are justified because of pre-existing conditions; (3) rear yard impervious surface coverage can be reduced as a condition of project approval, recognizing that because of the rear yard's small usable size and shading, large areas of landscaping are probably impractical; (4) the height of the front retaining wall can be lowered to align with the adjacent neighbor's wall and its transition toward the house in the side yard can be redesigned as a condition of project approval; and (5) a fencing agreement or survey can be required as a condition of project approval.

**Resolution 8-PL-09**

WHEREAS, Mr. and Mrs. Moon Lau are requesting retroactive approval for the enclosure of a front entry porch; modifications to the existing roof; addition of a new deck atop the existing garage; installation of new vinyl windows and wood front door; replacement of an existing garage door; construction of new entry stairs and wrought-iron guardrail; and other ornamental modifications to the residence located at 47 Jerome Avenue, Piedmont, California, which construction requires variance; and

WHEREAS, variances from the requirements of Chapter 17 of the Piedmont City Code are necessary in order to exceed the City's hardscape surface coverage limit and to construct within the front yard and left (north) side yard setbacks; and

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

1. While existing property conditions may prevent full compliance with code requirements regarding the requested variances, the applicant has failed to show that the extent of the requested variances are required for the proposed improvements. In fact, according to applicant testimony, the amount of impervious surface at the rear of the property could be reduced from that currently proposed without adversely affecting property use.
2. With regard to the front yard setback variance, the applicant has not submitted a design that requires construction within the front yard setback.
3. With regard to the left side yard setback variance, the applicant has not submitted a design that requires the variance in this configuration.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission denies the variance application of Mr. and Mrs. Lau for the above variances at 47 Jerome Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City.

Moved by Thiel, Seconded by Levine

Ayes: Levine, Thiel

Noes: Kellogg, Robertson, Stehr

Absent: None

**THIS MOTION FAILED**

**Resolution 31-V-09**

WHEREAS, Mr. and Mrs. Moon Lau are requesting retroactive approval for the enclosure of a front entry porch; modifications to the existing roof; addition of a new deck atop the existing garage; installation of new vinyl windows and wood front door; replacement of an existing garage door; construction of new entry stairs and wrought-iron guardrail; and other ornamental modifications to the residence located at 47 Jerome Avenue, Piedmont, California, which construction requires variance; and

WHEREAS, variances from the requirements of Chapter 17 of the Piedmont City Code are necessary in order to exceed the City's hardscape surface coverage limit and to construct within the front yard and left (north) side yard setbacks; and

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

1. The underlying lot and existing improvements present unusual physical circumstances, including but not limited to the fact that the left and front yard setback encroachment is a pre-existing condition. The existing home is located within these setbacks and 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 variances are compatible with the immediately surrounding neighborhood and the public welfare because the footprint of the existing house is not being enlarged, the front and left side yard encroachment is pre-existing and the proposal conforms with the setbacks on neighboring properties.
3. Accomplishing the improvement without variance would cause unreasonable hardship in planning, design, or construction because of the small size of the lot and the home's configuration on this lot. The proposed improvements do not impact the existing footprint on the property.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the variance application of Mr. and Mrs. Lau for the above variances at 47 Jerome Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following condition:

- The impervious surface coverage on the property be reduced to a maximum of 80%.

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: Levine, Thiel

Absent: None



**Resolution 31-DR-09**

WHEREAS, Mr. and Mrs. Moon Lau are requesting retroactive approval for the enclosure of a front entry porch; modifications to the existing roof; addition of a new deck atop the existing garage; installation of new vinyl windows and wood front door; replacement of an existing garage door; construction of new entry stairs and wrought-iron guardrail; and other ornamental modifications to the residence located at 47 Jerome 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-2, II-3(a), II-3(b), II-3(c), II-4, II-6(b) and II-6(c). The proposed vinyl windows are acceptable because they are paintable and therefore comply with the City's Window Policy. The windows comply with Design Review Guideline V.
2. The design is appropriate, considering its effect on neighboring properties' existing views, privacy and access to direct and indirect light because, as conditioned, there will be very little impact on the existing situation. The proposal complies with Design Review Guidelines II-1, II-2, II-3(a), II-3(b), II-3(c), II-4, II-6(b), II-6(c) and 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.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review application of Mr. and Mrs. Lau for construction at 47 Jerome 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 Jerome and Oakland Avenues;
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. No building permit shall be issued for the construction approved in this application until all unauthorized construction has either been removed or received any required design review and building permit;
4. The proposed garage door shall be electronically operated; and
5. The proposed new exterior light fixtures shall be downward-directed of a maximum 60 watts and have an opaque shade that completely covers the light bulb;
6. The applicant shall provide the City with either a certified survey of the right side property line or a signed fencing agreement with the adjacent neighbor;
7. Once the right side property line is established in accordance with Condition #6, the retaining wall along the front right side of the property shall be redesigned so as to have the same height as the existing retaining wall to the right and the required transition "jog" shall be addressed either by stepping up the wall or some other transition treatment. Said redesign 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 Robertson, Seconded by Kellogg

Ayes: Kellogg, Robertson, Stehr

Noes: Levine, Thiel

Absent: None

**Variance and  
Design Review  
139 Lake Avenue**

Mr. Jonathan Davis and Ms. Susan Miller are requesting variance and design review to make various improvements, including to construct a approximately 546 sq. ft. second floor expansion; enlarge the existing garage; construct a new trash enclosure; add a skylight; make window and door modifications; and add exterior lighting. The requested variances are from: (1) Section 17.10.6 to allow the modified entry porch and eave of the new second story addition to extend to within 14'8" and 18'0", respectively, of the front property line in lieu of the code required minimum of a 20 ft. front yard setback; and (2) Section

17.22.2(b) to allow a floor area ratio of 52.1% in lieu of the code permitted maximum of 50%.

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

**Public testimony** was received from:

Jonathan Davis stated that the intent of the project is to update an older home, correct a dangerous accessibility situation with regard to an existing staircase, eliminate current basement drainage/dampness issues and create a conforming 1-car garage with improved driveway access. In response to Commission questions, he stated that the proposed increase in basement ceiling height (from 7 ft. to 8 ft.) is to make walking in this storage area more convenient.

Lisa Joyce, Project Architect, reviewed her discussions with the City Building Official regarding the change in basement ceiling height, noting the applicant's willingness to file a *Notice of Non-Habitation* to insure that this area is not used for living space. She also stressed that the variances are required in order to maintain existing building lines so as to improve the architectural integration of the existing 1987 addition with the main house. She also noted that there is not enough room on the property to add another 1-car garage without significant changes to the home's front entry.

The Commission agreed that the proposed driveway and garage improvements were acceptable and the front yard variance was justified because of pre-existing conditions on the property. However, the Commission felt that (1) the proposed second story expansion could be redesigned to be more compatible in size and scale with the neighboring 1-story bungalows on adjacent properties; (2) the requirement for a floor area ratio variance could be avoided; (3) the proposed ceiling height increase in the basement could easily lead to this area being converted into habitable space as well as the fact that an existing bedroom on the upper level being converted to an office could be reconverted back to a bedroom in the future, which in turn would substantially increase the density of a home with only 1 off-street parking space; and (4) given the significant size of the project, either a second parking space on the property should be proposed or an application for a parking variance submitted.

**Resolution 33-V-09**

WHEREAS, Mr. Jonathan Davis and Ms. Susan Miller are requesting permission to make various improvements, including to construct an approximately 546 sq. ft. second floor expansion; enlarge the existing garage; construct a new trash enclosure; add a skylight; make window and door modifications; and add exterior lighting located at 139 Lake Avenue, Piedmont, California, which construction requires variance; and

WHEREAS, variances from the requirements of Chapter 17 of the Piedmont City Code are necessary in order to exceed the City's floor area ratio and to construct within the front 20 ft. 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 do not present unusual physical circumstances because of which 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 floor area ratio variance is not compatible with the immediately surrounding neighborhood and the public welfare.
3. Accomplishing the improvement without a floor area ratio variance would not cause unreasonable hardship in planning, design, or construction. It is possible to build an addition to expand living space without such a variance.
4. While the front yard variance is a pre-existing condition and approval of such a variance for proposed improvements to the front of home is justifiable, the proposed overall design scheme cannot be built as submitted because it does not comply with the City's floor area ratio limitations.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission denies the variance application of Mr. Davis and Ms. Miller for the above variances at 139 Lake Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City.

Moved by Kellogg, Seconded by Robertson

Ayes: Kellogg, Levine, Robertson, Stehr, Thiel

Noes: None

Absent: None

#### **Resolution 33-DR-09**

WHEREAS, Mr. Jonathan Davis and Ms. Susan Miller are requesting permission to make various improvements, including to construct an approximately 546 sq. ft. second floor expansion; enlarge the existing garage; construct a new trash enclosure; add a skylight; make window and door modifications; and add exterior lighting located at 139 Lake Avenue, Piedmont, California, which construction requires design review; and

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

1. While the exterior design elements are aesthetically pleasing as a whole and comply with Design Review Guidelines II-3(a) through (d) in terms of quality, architectural style, detailing and material, the proposed project fails to comply with Design Review Guideline II-2. The proposed expansion's relationship to contiguous parcels in terms of mass and size is inappropriate due to the amount of square footage

being proposed. The full second floor results in the property exceeding the code permitted floor area ratio coverage and this excess coverage could be mitigated through a redesign of the second floor expansion.

2. The proposed upper level addition/expansion has been designed in a way that reasonably minimizes view and light impacts on neighboring properties (as defined in Section 17.2.70). The project complies with Design Review Guideline II-3(b) in terms of fenestration and detailing because there are no neighboring property at this height, hence the windows at this level do not impact neighbor privacy, light or view. However, because of this height, the home is now more imposing in terms of its relationship with existing adjacent properties and therefore fails to comply with Design Review Guideline II-2. The proposed project is not the best design in terms of bulk and massing relative to adjacent properties.

3. The size and height of the addition is commensurate with the size of the lot. The project complies with Design Review Guideline II-1 because there are properties in the neighborhood of similar size and height. However, the project fails to comply with Design Review Guideline II-3(d) because it is not similar in size and height with directly adjoining homes.

4. The safety of residents, pedestrians, and vehicle occupants and the free flow of vehicular traffic are not adversely affected. There is no material change on existing street and driveway access.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission denies, without prejudice, the design review application of Mr. Davis and Ms. Miller for construction at 139 Lake Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City.

Moved by Kellogg, Seconded by Robertson

Ayes: Kellogg, Levine, Robertson, Stehr, Thiel

Noes: None

Absent: None

**Variance and  
Design Review  
21 Manor Drive**

Mr. and Mrs. Eric Hsia are requesting variance and design review to demolish the existing garage and rear deck; construct a new 2-car garage at the southwest corner of the property; widen and repave the driveway; make other hardscape and landscape improvements throughout the property; and add exterior lighting. The requested variances are from: (1) Section 17.10.7 to allow the new garage to extend to within 7.5 inches from the left property line in lieu of the code required minimum of a 4 ft. side yard setback; and (2) Section 17.0.8 to allow the new garage to extend to within 1.5 inches of the rear property line in lieu of the code required minimum of a 4 ft. rear yard setback.

Written notice was provided to neighbors. **Five affirmative, one negative response forms** were received. **Correspondence** was received from: Sylvia Mollard, March 5.

**Public testimony** was received from:

Eric Hsia stated that the rear wall of his existing garage is rotted but his neighbor will not allow access onto her property in order to repair the garage. Therefore, the proposal is to demolish the existing garage and rebuild a new conforming 2-car garage with better access, increased usability and a rear wall that will require no future maintenance. He added that the relationship with his neighbor is badly strained, all communications are through lawyers and the problem stems from his neighbor's attempt to seize the land behind his garage via adverse possession.

Grier Graff, Project Architect, described the proposed improvements, noting that for structural reasons the front wall of the garage may have to be thickened. However, two conforming parking spaces will remain. He stated that the wall of new garage will be 7-1/2 inches closer to the rear property line than the old garage. The rear wall of the garage will be concrete block that will require zero maintenance – this is necessitated because of the accessibility issues caused by the neighbor. To stucco the rear wall so as to match the other three sides of the garage would require at least 3 ft. of clearance and permission from the neighbor to allow workers to enter her property.

The Commission agreed that the architectural design of the new garage compliments the existing home and its placement on the property is the most logical and typical. However, the Commission requested that the rear wall of the garage be pulled back to create approximately 1 ft. of separation between the garage wall and the rear property line to allow a fence to be erected between the properties as well as room for cleaning out this back area from time to time. Commissioner Levine encouraged the applicant to give his neighbor the option of having a stuccoed rear garage wall matching the other walls of the garage in exchange for granting access for this stuccoing to occur.

**Resolution 34-V-09**

WHEREAS, Mr. and Mrs. Eric Hsia are requesting permission to demolish the existing garage and rear deck; construct a new 2-car garage at the southwest corner of the property; widen and repave the driveway; make other hardscape and landscape improvements throughout the property; and add exterior lighting located at 21 Manor Drive, Piedmont, California, which construction requires variance; and

WHEREAS, variances from the requirements of Chapter 17 of the Piedmont City Code are necessary in order to add structure within the left (south) side yard setback and the rear (west) 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 location of the existing residence and garage. A new garage cannot be built without variance and the proposed new garage is generally in the same location as the existing. 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 variances are compatible with the immediately surrounding neighborhood and the public welfare because there are many homes in Piedmont with garages placed in rear corners of properties. The proposed new garage replaces an existing carport in essentially the same location.

3. Accomplishing the improvement without variance would cause unreasonable hardship in planning, design, or construction for the reasons cited above.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the variance application of Mr. and Mrs. Hsia for the above variances at 21 Manor Drive, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following condition:

- There shall be a 1 ft. separation distance between the rear wall of the garage and the rear property line

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

Moved by Levine, Seconded by Kellogg

Ayes: Kellogg, Levine, Robertson, Stehr, Thiel

Noes: None

Absent: None

#### **Resolution 34-DR-09**

WHEREAS, Mr. and Mrs. Eric Hsia are requesting permission to demolish the existing garage and rear deck; construct a new 2-car garage at the southwest corner of the property; widen and repave the driveway; make other hardscape and landscape improvements throughout the property; and add exterior lighting located at 21 Manor Drive, Piedmont, California, which construction requires design review; and

WHEREAS, after reviewing the application, plans and any and all testimony and documentation submitted in connection with such application, and after having visited subject property, the Piedmont Planning Commission finds that the 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 proposal is replacing a non-conforming carport with a conforming 2-car garage that is architecturally compatible with the residence.

2. The design is appropriate, considering its effect on neighboring properties' existing views, privacy and access to direct and indirect light because there is no impact. In fact, there should be an improvement in neighbor light, view and privacy because of the roof design of the new garage.

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.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review application of Mr. and Mrs. Hsia for construction at 21 Manor Drive, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

1. Based on the scope and nature of the proposed landscape and development plans, a best management practice plan for construction which complies with the Alameda Countywide Clean Water Program General and Residential Conditions of Approval will need to be developed by the applicant prior to obtaining a building permit;
2. 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 Manor Drive;
3. 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;
4. The new garage door shall be electronically operated;
5. Prior to the issuance of a building permit, the applicants shall apply and pay for an encroachment permit for the construction of the new garage located in the City's sewer easement at the rear of the property;
6. The construction plans shall include easily identifiable information on the sewer main at the rear of the property,



including its approximate location and depth as previously identified by the City Maintenance Crew; and

7. At their expense and under the guidance of the City's Public Works Supervisor, the applicants shall inspect and certify the sewer main by means of videotape after excavation and foundation is completed and prior to rough framing and inspection in order to verify the condition of the main. Should the videotape indicate the main has suffered damage during construction, any and all repairs shall be made at the applicant's expense.

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 Levine, Seconded by Kellogg

Ayes: Kellogg, Levine, Robertson, Stehr, Thiel

Noes: None

Absent: None

#### ADJOURNMENT

There being no further regular calendar business, Chairman Stehr adjourned the Commission at 7:45 p.m. to a Special Session to select the winners of the City's 2009 Design Award Program. Said Special Session to be held in the City Hall Conference Room.

#### SPECIAL SESSION

Chairman Stehr announced that the purpose of the special session is to review those projects nominated for the Commission's 2009 Design Awards and select award recipients. Presentation of the awards will be made at the April 13 Planning Commission meeting immediately following a reception held at City Hall to honor all award recipients. The Commission selected the following award recipients:

**Best New Home – Contemporary**                      **5 Hampton Court**

*(well-sited, quality construction in a natural setting)*

**Best New Home – Traditional**                      **280 Indian Road**

*(a beautifully designed, well integrated home in a landscaped setting)*

**Best Small Scale Remodel**                      **575 Crofton Road**

*(excellent design for a small property)*

**Best Deck**                      **550 Blair Avenue**

*(a very attractive, well integrated improvement)*

**Best Garage**                      **549 Blair Avenue**

**Best Seamless Second Story Addition**                      **101 Nova Drive**

*(a beautiful design)*

**Best Remodel and Landscape**

**25 Glen Alpine Road**

**ADJOURNMENT**

Chairman Stehr adjourned the special session at 8:30 p.m.