

**City of Piedmont  
COUNCIL AGENDA REPORT**

DATE: September 7, 2004

FROM: Kate Black, City Planner

SUBJECT: Appeal of Planning Commission Decision to Approve an Application for Variance and Design Review at 148 Ricardo Avenue (Application #04-0270)

**RECOMMENDATION:**

1. Uphold the Planning Commission's approval of a Variance and Design Review application at 148 Ricardo Avenue, adopting the Planning Commission's findings for approval by reference; and
2. Uphold the following conditions of approval:
  - Based on the scope and nature of the proposed development plans, a landscape plan for the rear yard shall be submitted, subject to staff review, prior to the issuance of a building permit.
  - The applicant shall submit a construction management plan for staff approval.

**GROUND FOR APPEAL:**

Attached is a copy of the appeal filed on July 21, 2004 and supplemental information submitted at the Planning Commission meeting, by the property owners at 144 Ricardo Avenue, Mr. and Mrs. Dragisa Milosevich, stating the reasons for their appeal (Exhibit E, page 26).

**APPLICATION DESCRIPTION:**

The property is a rectangular lot that slopes upward from the street. The existing house is a one-story bungalow with 3 bedroom, 2 baths, a living room, dining room, kitchen, small den, small main level storage room and basement storage.

The application proposes the construction of a 192 square foot first floor addition at the rear of the house for a new family room and laundry room (eliminating a bedroom) and a

new 432 square foot second story at the rear of the house to accommodate a new master bedroom and bath. A variance is required in order to construct within the left (northern) side yard setback area.

The new construction is proposed to have stucco walls, an asphalt composition shingle roof, and wooden windows (either true- or simulated-divided-light) to match the existing house. A small wooden shed is proposed to be attached to the rear main level wall to be used as a garbage enclosure.

A landscape plan was not submitted, but a shadow study was submitted and is part of the submitted application materials (Exhibit I). Additionally, a massing model which shows the house with the proposed second story and the two adjacent houses was submitted. It is located in the planning office and is available for Council and public review.

The Planning Commission staff report is attached as Exhibit D, page 18, and contains the code compliance analysis and applicable Design Review Guidelines.

#### APPLICATION HISTORY

Two similar applications for a lower level expansion and new partial second story have been submitted in the past year. The first application was approved by the Planning Commission on October 13, 2003 and overturned on appeal by the City Council on December 1, 2003. A second application was approved by the Planning Commission on April 12, 2004, and overturned by the City Council on May 17, 2004. The meeting minutes from both City Council meetings, which provide some direction to the applicant, have been attached. The May 17<sup>th</sup> minutes are in Exhibit B, page 10, and the December 1<sup>st</sup> meeting minutes are in Exhibit C, page 14). The prior architectural plans from the May 17, 2004 meeting have been provided in this packet for comparison purposes as Exhibit J.

#### PLANNING COMMISSION DECISION:

Attached are the meeting minutes from the July 12, 2004 Planning Commission meeting (Exhibit A, page 5). Commissioners Chang, Greenman, Hege, Karren and Levine unanimously approved the variance and design review application (Commissioner Summer was absent).

During their deliberations, the Commission found the design to be attractive, and noted that the applicants had made extensive efforts to mitigate neighbor impacts. They found that the loss of direct sunlight to the adjacent house at 144 Ricardo was minimal, and the open sky to the kitchen at 150 Ricardo was preserved. They noted that the current application was reduced in size and height from the prior application.

At the conclusion of their deliberations, the Commission found that the application appropriately balanced the desire of the applicants to improve their home with the desire of the neighbors to protect their own property rights.

### PLANNING COMMISSION FINDINGS

The Commission formalized their variance and design review decision by making the following findings:

#### **Variance:**

1. The underlying lot and existing improvements present unusual physical circumstances, including but not limited to: the existing house is located within the setback, the narrowness of the lot and the placement of the house on the lot. 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 significant separation distance (10 to 12 ft.) between the property and 144 Ricardo mitigates view, light and privacy issues.
3. Accomplishing the improvement without a variance would cause unreasonable hardship in planning, design, or construction because it is not possible to expand the house without variance.

#### **Design Review:**

1. The design of the improvement is desirable because it is consistent in terms of window treatment, exterior materials and roof pitch with the existing residence. The proposal complies with Design Review Guidelines II-1, II-2 and II-3 in terms of scale, mass and architectural compatibility with the existing home and neighboring structures. The resulting home will not be larger than its adjacent neighbors, the small second story addition has been setback so as not to overpower neighboring residences, the size of the proposal is well within allowable code limits for lot coverage, floor area ratio coverage and building height.
2. The design of the improvement does not have a substantial adverse effect on neighboring properties. There will be no impact on the view and indirect light of 150 Ricardo with the small exception of the area directly behind the kitchen sink – the existing sky view will not be significantly reduced and the impact will be only on one view perspective from this room. There will be no privacy impact on

either 150 or 144 Ricardo nor will there be any loss of existing indirect light to these properties. Per the submitted sun study, direct sunlight on the front bedroom of 144 Ricardo will be slightly impacted from November through March for a few hours a day during this period. This amount of impact is reasonable and appropriate *on balance* when considering the benefits to 148 Ricardo from the proposed improvement.

3. The design does not adversely affect pedestrian safety, vehicular traffic, or the convenience of either pedestrians or vehicles because there is no change in existing traffic patterns.

Date report prepared: September 1, 2004

EXHIBITS:

Exhibit A, page 5	July 12, 2004 Planning Commission Meeting Minutes
Exhibit B, page 10	May 17, 2004, City Council Meeting Minutes
Exhibit C, page 14	December 1, 1003 City Council Meeting Minutes
Exhibit D, page 18	Planning Commission Staff Report
Exhibit E, page 26	July 21, 2004 Appeal Letter (Milosevich)
Exhibit F, page 27	Neighbor Comments
Exhibit G, page 33	Planning Commission Application
Exhibit H, separate	Supplemental Photographs Submitted by Appellant at PC Meeting
Exhibit I, separate	Current Architectural Plans, date-stamped July 1, 2004 Supplemental Information Submitted by Applicant Shadow Study
Exhibit J, separate	Previous Architectural Plans, date-stamped March 23, 2004

**PIEDMONT PLANNING COMMISSION**

Regular Meeting Minutes for Monday, July 12, 2004

A Regular Session of the Piedmont Planning Commission was held July 12, 2004, 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 May 28, 2004.

**CALL TO ORDER**

Chairman Hege called the meeting to order at 5:00 p.m. She announced that Agenda Item #10 (Variance/Design Review, 15 Glen Alpine) has been withdrawn from tonight's consideration. She also introduced and welcomed Planning Technician Kevin Jackson.

**ROLL CALL**

Present: Commissioners Arleta Chang, Marty Greenman, Tamra Hege, Fred Karren and Alternate Commissioner Jonathan Levine

Absent: Commissioner Suzanne Summer (excused)

Staff: City Planner Kate Black, Assistant Planner Linda Ajello, Planning Consultant Robin Stark, Planning Technician Kevin Jackson and Recording Secretary Chris Harbert

City Council Liaison: Councilmember Dean Barbieri

**Variance and  
Design Review  
148 Ricardo Avenue**

Ms. Jackie Gibbons and Mr. Garrett Keating are requesting variance and design review to construct a 192 sq. ft. first floor addition at the rear of the house for a family room and laundry room; add a new 432 sq. ft. second story at the rear of the house to accommodate a new master bedroom and bath; make window and door modifications; and add exterior lighting. The requested variance is from Section 17.10.7 to allow the eaves of the first story addition to extend to within 2 ft. of the left side property line in lieu of the code required minimum of a 4 ft. side yard setback. Similar applications were considered by the Commission in October 2003 and April 2004.

Written notice was provided to neighbors. **One affirmative and one negative response form** was received. **Correspondence** was received from Dag & Boba Milosevich, July 8; Garrett & Jackie Keating, July 1 and 8;

**Public testimony** was received from:

Jackie Gibbons and Garrett Keating reviewed the history of their efforts to construct a second story addition, stressing that the numerous submitted designs have been influenced by attempts to mitigate competing neighbor requests. They stated that the current design mitigates 144 Ricardo's concern over loss of master bedroom direct sunlight as well as 150 Ricardo's concern over light and view loss to the kitchen area.

Jason Kaldis, Project Architect, displayed a model of the redesign in highlighting the changes made since the last submittal. He referenced the submitted sun study in indicating that there will be some

shadowing of the master bedroom at 144 Ricardo for approximately 1 to 2 hours a day from November to March.

Dag, Alex and Miro Milosevich reiterated their adamant objection to any second story construction at 148 Ricardo because of the adverse shadowing impacts on 144 Ricardo. They felt the current design was not significantly different from the previous submittal and that direct sunlight will be lost to their home's bedroom area during the winter months. This loss of sunlight will be detrimental to their health and enjoyment of their property as well as possibly cause hazardous mold conditions. They felt that the submitted sun study was inaccurate and that the actual shadowing of their property will be substantially more than indicated in the study.

Anita Stapen voiced concern over the loss of direct sunlight and open sky view from her kitchen.

The Commission supported application approval, citing in particular: (1) the attractiveness of the redesign and its reduced mass and appropriate size; (2) its logical placement on the home; (3) the minimal light loss to 144 Ricardo – indirect light will remain unchanged, only direct sunlight will be minimally affected during a portion of the day – and the availability of several options to 144 Ricardo to maximize its sunlight receipt through modification of existing eaves, removal of frosted glass, removal of large awning and/or modifications to drawn curtains and blinds; (4) the lack of project impact on the streetscape; (5) the open sky view to the kitchen at 150 Ricardo is preserved, with the possible exception of the view from immediately in front of the kitchen sink – light to this kitchen is unaffected; (6) the applicants' extensive efforts to mitigate neighbor impacts; (7) the absence of other feasible expansion options for the property; and (8) the appropriateness and need to balance the interest of property owners with that of their neighbors in the most reasonable and fair manner.

**Resolution 270-V-04**

WHEREAS, Ms. Jackie Gibbons and Mr. Garrett Keating are requesting permission to construct a 192 sq. ft. first floor addition at the rear of the house for a family room and laundry room; add a new 432 sq. ft. second story at the rear of the house to accommodate a new master bedroom and bath; make window and door modifications; and add exterior lighting located at 148 Ricardo 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 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 existing house is located within the setback, the narrowness of the lot and the placement of the house on the lot. 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 significant separation distance (10 to 12 ft.) between the property and 144 Ricardo mitigates view, light and privacy issues.

3. Accomplishing the improvement without a variance would cause unreasonable hardship in planning, design, or construction because it is not possible to expand the house without variance.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the variance application of Mr. Keating and Ms. Gibbons for the above variance at 148 Ricardo Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following condition:

- Based on the scope and nature of the proposed development plans, a landscape plan for the rear yard shall be submitted, subject to staff review, prior to the issuance of a building permit

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 Greenman, Seconded by Levine

Ayes: Chang, Greenman, Hege, Karren, Levine

Noes: None

Absent: Summer

#### **Resolution 270-DR-04**

WHEREAS, Ms. Jackie Gibbons and Mr. Garrett Keating are requesting permission to construct a 192 sq. ft. first floor addition at the rear of the house for a family room and laundry room; add a new 432 sq. ft. second story at the rear of the house to accommodate a new master bedroom and bath; make window and door modifications; and add exterior lighting located at 148 Ricardo 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 design of the improvement is desirable because it is consistent in terms of window treatment, exterior materials and roof pitch with the existing residence. The proposal complies with Design Review Guidelines II-1, II-2 and II-3 in terms of scale, mass and architectural compatibility with the existing home and neighboring structures. The resulting home will not be larger than its adjacent neighbors, the small second story addition has been setback so as not to overpower

neighboring residences, the size of the proposal is well within allowable code limits for lot coverage, floor area ratio coverage and building height.

2. The design of the improvement does not have a substantial adverse effect on neighboring properties. There will be no impact on the view and indirect light of 150 Ricardo with the small exception of the area directly behind the kitchen sink – the existing sky view will not be significantly reduced and the impact will be only on one view perspective from this room. There will be no privacy impact on either 150 or 144 Ricardo nor will there be any loss of existing indirect light to these properties. Per the submitted sun study, direct sunlight on the front bedroom of 144 Ricardo will be slightly impacted from November through March for a few hours a day during this period. This amount of impact is reasonable and appropriate *on balance* when considering the benefits to 148 Ricardo from the proposed improvement.

3. The design does not adversely affect pedestrian safety, vehicular traffic, or the convenience of either pedestrians or vehicles because there is no change in existing traffic patterns.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review application of Mr. Keating and Ms. Gibbons for construction at 148 Ricardo Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following condition:

- Based on the scope and nature of the proposed development plans, a landscape plan for the rear yard shall be submitted, subject to staff review, prior to the issuance of a building permit;
- The applicant shall submit a construction management plan for staff 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 Greenman, Seconded by Levine

Ayes: Chang, Greenman, Hege, Karren, Levine

Noes: None

Absent: Summer



**PIEDMONT CITY COUNCIL**

Regular Meeting Minutes for Monday, May 17, 2004

A Regular Session of the Piedmont City Council was held May 17, 2004, 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 May 13, 2004.

**CALL TO ORDER**

Mayor Bruck called the meeting to order at 7:30 p.m. with the Pledge of Allegiance.

**ROLL CALL**

Present: Mayor Michael Bruck, Vice Mayor Nancy McEnroe and Councilmembers Dean Barbieri, Abe Friedman and Jeff Weiler

Staff: City Administrator Geoff Grote, City Attorney George Peyton, Fire Chief John Speakman, Finance Director Mark Bichsel, Public Works Director Larry Rosenberg, Recreation Director Mark Delventhal, City Clerk Ann Swift, City Planner Kate Black and Recording Secretary Chris Harbert

**Public Hearing:  
Appeal of Planning  
Commission Decision,  
148 Ricardo Avenue**

The City Planner stated that Mr. and Mrs. Dragisa Milosevich have appealed the Planning Commission's April 12 approval of Ms. Jackie Gibbons and Mr. Garrett Keating's variance and design review application to construct a first and second floor addition to their home at 148 Ricardo Avenue. The application reflects a project redesign based upon a December 1, 2003, Council appeal decision overturning an October 13, 2003, Planning Commission approved second floor addition plan that was also appealed by Mr. and Mrs. Milosevich.

**Correspondence** was received from: Mr. & Mrs. Dragisa Milosevich, dated April 20, May 12; Martha Kelley, May 6; Ann Schertz Dong, May 2.

**Public testimony** was received from:

Tam Hege, Planning Commission Chairman, summarized the Commission's deliberations, noted that the approval was a 4 to 1 vote and stated that the Commission felt the redesign complied with the City's Design Review Guidelines. While the Commission acknowledged that there was some impact to adjacent neighbors in terms of light and view loss, it determined that this impact was not substantial.

Dag Milosevich stressed that the redesign still negatively impacts his property in terms of light, view and quality of life loss. He reiterated his strong opposition to any second story addition because of the adverse shadowing impacts on his property and urged that the applicants be encouraged to expand rearward into their rear yard or excavate under the home to add the desired additional living space.

Alex Milosevich cited his belief that the applicants have misrepresented facts regarding the size of their proposal and the corresponding shadowing impacts on his parents' home. He felt that the Commission exhibited bias in its deliberations, failed to support Commissioner

Karren's opinion that better design alternatives exist to accommodate the applicants' objectives with less neighborhood impact and repeatedly stressed that the increased shadowing of his parents' home would significantly impact his parents' quality of life and property enjoyment as well as decrease property value. He also criticized the fact that only two Planning Commissioners viewed the proposal from his parents' home, believing that a true understanding of the impact could not be fully realized without such a visit.

Miro Milosevich exhibited photographs to refute the accuracy of the applicants' sun study, stated that the size of the redesign is not less than the original submittal as claimed by the applicants and felt that the Commission and planning staff were unresponsive to his claims that the applicants' submitted documentation contained inaccuracies and inconsistencies.

Jackie Gibbons disagreed with the Milosevichs' contentions that there were Planning Commission procedural errors, noted that the size of the second story addition was scaled back from that originally proposed and reiterated her belief in the accuracy and factual integrity of the submitted plans and documentations.

Jason Kaldis, Project Architect, acknowledged that the discrepancy in the size of the project was due to his office's failure to include the stair shaft in the square footage calculations but emphasized that the square footage of the second story addition has been scaled back from that originally proposed. He also noted that the separation distance between the applicants' property and the two adjacent side neighbors is greater than the neighborhood average. He disagreed with the contention that the desired amount of living space could be accomplished by extending out into the rear yard, reiterated his belief in the accuracy of the sun study and model depiction of proposed shadowing impacts and noted that a dormer addition could not create habitable second story living space because the home's existing roof slope is too low.

Garrett Keating urged the Council to uphold the Planning Commission's decision and to rely on the judgment of its planning advisory body. He noted that per Council direction of last December, the shadowing impact on the Milosevich's master bedroom has been reduced; albeit the redesign will shadow to a greater extent a rear bedroom. He stated that the redesign was formulated upon the City's Design Review Guidelines, complies with said guidelines and he voiced apprehension for residents if the Council capriciously disregards this established planning guideline.

Anita Stapen felt that the redesign imposed less negative impact on her property than the original design; albeit her kitchen light and sky view will still be significantly diminished. However, she supported application approval as a way to bring to an end the neighborhood dissension and fatigue which has resulted from this issue, agreeing that the applicants' have exhibited a good faith effort to minimize as much as possible the adverse impacts associated with their expansion.

The Council was divided in its support of application approval. Those in favor of granting the appeal and overturning the Planning Commission's decision cited the following reasons: (1) unfortunately the applicants' property is a small, narrow lot in close proximity to neighboring homes, therefore upward expansion impacts to an unacceptable degree the privacy, light and views of these adjacent neighbors; (2) the Commission needs to realize that some small homes

and properties within the City simply cannot accommodate second story additions because of the significant negative impact on adjacent properties – not all second story proposals are doable or acceptable; (3) given the Bay Area’s housing market and economic conditions, the pressure to expand small homes in order to accommodate property owners’ living space needs rather than buying larger, better suited properties is an increasing trend with significant detrimental impact on the City’s housing stock and quality of neighborhood development and enjoyment – precedent should not be set allowing this degradation to flourish; (4) the proposed redesign does not comply with the City’s Design Review Guidelines because of its significant adverse impact on neighbor views, privacy and access to direct and indirect light – the Planning Commission should be encouraged to consider the impact on sky views, light and air as important factors in determining the appropriateness of proposed construction; and (5) it is unfair to allow development plans which exclusively benefit applicants to be at the expense of long-time neighbors. The Council also voiced regret that not all Planning Commissioners visited the Milosevich’s property in connection with their evaluation of the project’s merit. Chairman Hege clarified Mr. Milosevich’s earlier criticisms by noting that Commissioner Greenman visited the Milosevich’s property at the time of the original proposal (the rest of the Commission was not invited to visit), Commissioner Chang makes it a practice not to visit neighboring homes and the Commission’s new Alternate member had just been appointed.

Those Councilmembers in support of denying the appeal and upholding the Planning Commission’s decision, cited: (1) the absence of significant procedural errors or errors in judgment to justify overturning the Commission’s decision; (2) the applicants’ good faith effort in responding to Commission/Council redesign suggestions and attempting to minimize as much as possible impacts on neighbors; (3) the appropriateness of relying on the Council’s planning advisory body to evaluate construction projects rather than substituting the Council’s personal opinions/judgments for those of the Commission; (4) confidence in the Commission’s ability to consistently and fairly apply the City’s planning standards to proposed construction; and (5) if the Council wishes to send a new policy message to the Commission, it should be done so through worksession discussions rather than appeal overturns.

**Resolution 29-04**

WHEREAS, Ms. Jackie Gibbons and Mr. Garrett Keating are requesting permission to construct a 192 sq. ft. first floor addition at the rear of the house for a family room and laundry room; add a new 496.33 sq. ft. second story at the rear of the house to accommodate a new master bedroom suite; make window and door modifications; and add exterior lighting located at 148 Ricardo Avenue, Piedmont, California, which construction requires variance and design review; and

WHEREAS, the Piedmont Planning Commission approved Ms. Gibbon’s and Mr. Keating’s variance and design review application on April 12, 2003, and this approval decision was appealed by Mr. and Mrs. Dragisa Milosevich; 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 City Council makes the following finding:

- The proposed construction imposes a substantial adverse impact on the light, air and privacy of both adjacent neighbors

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont City Council grants Mr. and Mrs. Milosevich's appeal, overturns the Planning Commission's April action on this matter and denies the variance and design review application of Ms. Gibbons and Mr. Keating for proposed construction at 148 Ricardo Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City.

Moved by Barbieri, Seconded by McEnroe

Ayes: Barbieri, McEnroe, Weiler

Noes: Bruck, Friedman

Absent: None

(0080)

**PIEDMONT CITY COUNCIL**

Regular Meeting Minutes for Monday, December 1, 2003

A Regular Session of the Piedmont City Council was held December 1, 2003, 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 November 27, 2003.

**CALL TO ORDER**

Following a 7:00 p.m. Closed Session regarding salary negotiations with Local 790 of SEIU held pursuant to Government Code Section 54957.6, Mayor Matzger called the meeting to order at 7:35 p.m. with the Pledge of Allegiance.

**ROLL CALL**

Present: Mayor Valerie Matzger, Vice Mayor Michael Bruck and Councilmembers Abe Friedman, Nancy McEnroe and Jeff Wieler

Staff: City Administrator Geoff Grote, City Attorney George Peyton, Police Chief John Moilan, Fire Chief John Speakman, Public Works Director Larry Rosenberg, Finance Director Mark Bichsel, Recreation Director Mark Delventhal, City Clerk Ann Swift, City Planner Kate Black, Firefighter John Tessandori and Recording Secretary Chris Harbert

**REGULAR CALENDAR**

The Council considered the following items of regular business:

**Appeal**

The City Planner stated that Mr. and Mrs. Dragisa Milosevich have appealed the Planning Commission's October 13 conditional approval of Ms. Jackie Gibbons and Mr. Garrett Keating's variance and design review application to construct a second story addition at 148 Ricardo Avenue.

Planning Commission Vice Chair Tam Hege stated that the Commission approved the application, subject to conditions, based upon the findings that the addition was sensitively designed to minimize impacts on adjacent neighbors, the neighborhood is a mix of one and two story homes, and the applicant's sun study indicated that while there would be some additional shadowing impact on 144 Ricardo, this increased shadowing was primarily limited to the bedrooms of 144 Ricardo rather than the main living areas of the home. Given the modest size of the proposed addition and the applicants' conscientious effort to minimize neighbor impacts, the Commission felt the expansion proposal was reasonable. Mrs. Hege acknowledged that she did not view the proposal from inside the Milosevich's home and was uncertain whether any other Commissioner visited the Milosevich's property or examined the proposal from inside their home.

**Public testimony** was received from:

Jackie Gibbons stated that her small home can no longer accommodate her growing family but because they love the neighborhood, they do not wish to move to a larger house. She reviewed the extensive efforts that she and her architect employed in proposing an expansion plan that

would impose the least amount of adverse impact on adjacent neighbors in terms of light and privacy loss. She stressed that the resulting expansion plan is modestly sized and compact in design in order to minimize neighbor impact.

Jason Kaldis, Project Architect, reiterated Ms. Gibbons's comments regarding the efforts made to minimize shadowing on 144 Ricardo and emphasized that the project is much smaller than what the code allows in terms of lot coverage, floor area ratio, building height and setbacks.

Miro and Alex Milosevich, the appellant's sons, emphasized the detrimental impact the proposed second story would have on their parents' home in terms of loss of light, enjoyment and property value. They submitted photographs of the home's interior in support of their contention that morning light into the home's interior would be completely lost during the winter months. They felt that such loss of light could create health problems for their elderly parents as a result of mold, lack of ventilation and an absence of natural light. They felt that the applicants could add desired living space by excavating under the home and/or relocating the garage to enable living space to be added outward into the rear yard. These design options would impose less impact on neighbors.

Dag Milosevich concurred with his sons' comments that there would be a significant loss of direct and indirect light into his home and a corresponding dramatic loss of the enjoyment of the home that he and his wife have had for over 30 years. He noted that 8 years ago the former owner of 148 Ricardo proposed a second story addition but abandoned this plan because of its negative impacts on the neighborhood. This previous owner ended up moving to a larger home. Mr. Milosevich noted that no one from the Planning Commission viewed the proposal from inside his home and also visited the site in the afternoon and not in the morning when the significant shadowing and light loss would be most apparent. Therefore, the Planning Commission failed to understand the extent of the adverse impact the proposal would impose upon his property. He urged that the applicants consider relocating their garage under the house to allow living space expansion into the rear yard which would have less adverse impact.

Anita Stapan referenced her letters of opposition to the proposal, believing that the addition was located closer to her property in an attempt to alleviate the Milosevich's objections and that this was unfair. She also preferred a more rearward expansion to minimize the loss of neighbor light and privacy. She noted that as currently designed, the second story addition would significantly enclose and darken the kitchen/family room area of her home as well as reduce light to her stairwell and foyer.

The Council acknowledged the applicants' good faith efforts to minimize the impacts of their proposed addition but stressed that the dense nature of the neighborhood and the narrowness of the lots make it nearly impossible for any second story addition to avoid adversely impacting neighbors. The Council acknowledged that the loss of morning light during the winter is a serious and significant adverse impact on 144 Ricardo and stressed that the extent of this adverse impact was not realized by the Planning Commission because it did not view the proposal from the interior of the Milosevich's home. Because of this significant impact, the proposal fails to comply with the City's Design Review Guidelines. The Council noted that there

may be alternative design options for allowing the applicants to add desired living space while minimizing impacts on neighbors and it encouraged the applicants to continue to discuss such options with neighbors. In particular, the Council noted the possibility that the home could be raised to add living space and/or the garage underneath and thus free up more area in the rear yard for outward expansion. Or an arrangement could be reached with neighbors to add skylights to their homes to compensate for the loss of light caused by a second story addition. The Council therefore requested that a new expansion design be submitted for Planning Commission review. However, in recognition of the applicants' sincere efforts to submit a sensitively designed proposal, the Council agreed that any variance fees associated with a resubmittal would be waived.

**Resolution 118-03**

WHEREAS, Ms. Jackie Gibbons and Mr. Garrett Keating are requesting permission to add a new 540 sq. ft. second story to accommodate a new master bedroom suite; construct a 123 sq. ft. addition at the rear of the house for a family room and laundry room; extend the height of the chimney; make window and door modifications; add three skylights; and add exterior lighting located at 148 Ricardo Avenue, Piedmont, California, which construction requires variance and design review; and

WHEREAS, the Piedmont Planning Commission approved Ms. Gibbons and Mr. Keating's variance and design review application on October 13, 2003, and this approval decision was appealed by Mr. and Mrs. Dragisa Milosevich; and

WHEREAS, after reviewing the application, plans and any and all testimony and documentation submitted in connection with such application and appeal, and after having visited subject property, the Piedmont City Council makes the following finding:

- The proposal fails to comply with the City's Design Review Guidelines because of the significant adverse effect it would have on the light, view and privacy of the residents at 144 Ricardo Avenue, recognizing that the Council only realized the extent of this adverse impact as a result of viewing the proposed addition from inside the Milosevich's residence – the extent of the adverse impact was not apparent from viewing the proposal from outside the Milosevich's home.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont City Council grants Mr. and Mrs. Milosevich's appeal, overturns the Planning Commission's October action on this matter and denies the variance and design review application of Ms. Gibbons and Mr. Keating for proposed construction at 148 Ricardo Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City; and

RESOLVED FURTHER, that any variance fees associated with a submittal of a new design by Ms. Gibbons and Mr. Keating for proposed construction at 148 Ricardo Avenue are hereby waived.

Moved by Friedman, Seconded by Bruck

Ayes: Matzger, Bruck, Friedman, McEnroe, Wieler

Noes: None

Absent: None

(0080)

July 12, 2004

Planning Commission

Kate Black, City Planner

STAFF REPORT FOR 148 Ricardo Avenue

AGENDA ITEM NUMBER 7

APPLICATION SUMMARY:

Variance and Design Review 04-0270

Jackie Gibbons and Garrett Keating  
148 Ricardo Avenue

The applicants request Variance and Design Review to construct a 192 square foot first floor addition at the rear of the house for a family room and laundry room; add a new 432 square foot second story at the rear of the house to accommodate a new master bedroom and bath; make window and door modifications; and add exterior lighting. A variance is required in order to construct within the left (northern) side yard setback area.

CODE COMPLIANCE:

The residence is situated on a non-conforming lot in zone A. The lot contains approximately 5,000 square feet of area and 40 feet of frontage. The minimum lot area required in the City Code (section 17.10.2) is 10,000 square feet and the minimum lot frontage (section 17.10.3) is 90 feet. *Existing non-conforming.*

The existing structure coverage is 35% and is proposed to increase to 39%. The maximum limit in the City Code (section 17.10.4) is 40%. *Complies.*

The existing impervious surfaces coverage is 71.6% (*existing non-conforming*) and is proposed to remain at 71.6%. The maximum limit in the City Code (17.10.4) is 70%. *Existing non-conforming.*

The existing building height (average) is 19 feet, 3 inches and is proposed to increase to 25 feet, 11 inches. The maximum limit in the City Code (section 17.10.5) is 35 feet. *Complies.*



The existing front yard setback is 16 feet, 8 inches to the eaves of the entry porch (*existing non-conforming*) and is proposed to be approximately 60 feet to the eaves of the proposed new second story. The minimum required front yard setback in the City Code (section 17.10.6) is 20 feet. *Complies.*

The existing right side yard setback is 7 feet, 6 inches to the existing eaves and is proposed to be 8 feet, 4 inches to the eaves of the proposed second story. The minimum required side yard setback in the City Code (section 17.10.7) is 4 feet. *Complies.*

The existing left side yard setback is 8 inches to the existing eaves (*existing non-conforming*) and is proposed to be 2 feet to the eaves of the new first story addition (the setback to the eaves of the proposed new second story is 5 feet which complies). The minimum required side yard setback in the City Code (section 17.10.7) is 4 feet. ***Does not comply - requires a variance.***

The existing rear yard setback is 46 feet, 8 inches to the rear of the house and is proposed to be 38 feet to the new construction at the upper level. The minimum required rear yard setback in the City Code (section 17.10.8) is 4 feet. *Complies.*

The existing residence has 3 rooms eligible for use as a bedroom and one covered non-tandem parking space that measures 11 feet, 4 inches by 19 feet, 3 inches (*existing non-conforming - 2 covered, non-tandem spaces measuring 9 feet by 20 feet are required*). The application proposes 3 rooms eligible for use as a bedroom and no changes to the parking. *Existing non-conforming.*

The existing floor area ratio is 26% and is proposed to increase to 38.7%. The limit in the City Code is 55% for a parcel which is 5,000 square feet or less (section 17.22(a)). If the residence were to be fully developed at some time in the future by converting existing basement space to living space, the floor area ratio would be approximately 46.5%, but would require excavation. Section 17.22.3 of the City Code permits the development of living spaces within a building envelope without regard for the resulting floor area ratio calculation. It is appropriate to consider this code section when considering an expansion of the building envelope. *Complies.*

#### VARIANCES:

A variance from the requirements of Chapter 17 of the Piedmont City Code is required in order to construct within the left (northern) side yard setback area.

According to Section 17.21.1 of the Piedmont City Code, variances from these regulations shall not be granted except when the particular property to be improved varies in some unique physical way from other properties in the same zone and, because of these physical differences, applying the regulations of Chapter 17 would effectively prohibit the use of the property in a manner similar to the use of other properties in the same

zone. This standard of hardship relates to the property, not the personal or economic circumstances of the applicant. No variance shall be granted for reasons which are personal to the applicant and unrelated to the uniqueness of the property.

VARIANCE FINDINGS:

To approve the variance requested by this application, the Planning Commission must make specific findings of fact to support all of the following conclusions. The **applicants'** proposed findings are indicated in **bold**.

(a) The underlying lot and existing improvements present unusual physical circumstances including but not limited to: **See attached.**

(b) The variance is compatible with the immediately surrounding neighborhood and the public welfare as follows: **See attached.**

(c) Accomplishing the improvements without a variance would cause unreasonable hardship in planning, design or construction as follows: **See attached.**

"Unreasonable hardship" for purposes of this subsection refers to the unusual physical characteristics of the underlying lot and existing improvements on the lot which prohibit development of the lot in a manner consistent with lots conforming to City standards. "Unreasonable hardship" shall not refer to any conditions personal to the applicant.

DESIGN REVIEW:

The property is a rectangular lot that slopes upward from the street. The existing house is a one-story bungalow with 3 bedrooms, 2 baths, a living room, dining room, kitchen, small den, small main level storage room and basement storage.

The application proposes to construct a 192 square foot addition to the main level rear of the house and add a 432.14 square foot second story over the rear of the house. The application proposes to eliminate a main level rear bedroom and bath and construct a new family room, laundry room, half bath and stairs leading to the proposed second story. The new second story is proposed to have a master bedroom suite with a bedroom and bath.

The new construction is proposed to have stucco walls, an asphalt composition shingle roof, and wooden windows (either true- or simulated-divided-light) to match the existing house. A small wooden shed is proposed to be attached to the rear main level wall to be used as a garbage enclosure.

A landscape plan was not submitted, but a shadow study was submitted and is part of the application materials in the Commission packet. Additionally, a massing model which shows the house with the proposed second story and the two adjacent houses was submitted. It is located in the planning office and is available for Commission and public viewing.

Should the Commission wish to make the required variance and design review findings to approve the project, the Commission might consider the following conditions of approval:

1. Based on the scope and nature of the proposed development plans, a landscape plan for the rear yard shall be submitted, subject to staff review, prior to the issuance of a building permit.

Design Review Guidelines which may be used for reference are listed below.

DESIGN REVIEW GUIDELINES:

Guideline II-1: The scale and mass of the existing residence, once the addition/remodel has been completed, should maintain compatibility with the scale and mass of the existing residences in the neighborhood.

Guideline II-2: The scale and mass of the existing residence, once the addition/remodeling has been completed, should maintain compatibility with the scale and mass of the existing residences on contiguous parcels and should not overpower or dominate them.

Guideline II-3: The architectural style, scale, and mass of the addition/remodeling should be consistent with the architectural style, scale, and mass of the existing residence.

Comments:

II-3(a): The objective of Guideline II-3 regarding consistency of architectural style, scale and mass is compatibility so that the addition/remodeling cannot be distinguished from the original structure. An addition or remodel which looks “tacked on” or is immediately apparent to the observer, obviously fails to meet this objective.

II-3(b): Consistency with respect to architectural style is a matter of breaking down the existing residence into its individual components, as listed below, and their respective details, and matching them in the design of the addition. Matching means consistency in design and construction as defined by

rhythm, texture, color and materials. Components and details which should be matched include:

Foundation. The appearance of the foundation of the addition, if it will have one, should match the appearance of the foundation of the existing residence so that it appears that the two are continuous. This is especially important for those portions of the foundation which will be visible from the street and adjacent parcels.

Porches. The construction of additional porches or the reconstruction of an existing porch should match any porches which were original to the existing residence. Particular attention should be given to the porch roof, columns, balustrades and railings, which are usually the most visible elements of the porch. New elements should be compatible with the design of the existing elements. Elements which are inconsistent with the architectural style of the residence should be avoided.

Exterior Stairs. New exterior stairs, or reconstructed existing stairs, should be consistent with the architectural style of the house, especially if they will be visible from the street. Consistency also applies to stair railings. If it is cost-prohibitive to exactly replicate the original stair railings, the original design should be followed in simplified form.

Doors. New or replacement doors should be consistent with the architectural style of the house, but should also be sensitive to maintaining the security of the residence.

Exterior Wall Covering. The siding used on the exterior walls of the addition or remodeled portion of the residence should be consistent with the design integrity of the existing residence. Where the original siding of the residence has been replaced or is covered over with a "modern" siding, e.g. asbestos shingles covering wood shingles, the construction of the addition may offer the opportunity to restore the entire residence to its original siding. Where it is impossible to obtain siding which exactly matches the existing siding, a close substitute should be used.

Ornamentation. The ornamentation and the design details of the addition should be consistent with those of the existing structure. Conflicting or inappropriate ornamentation should be avoided.

Windows. The type proportion, placement, details and materials of new windows should be compatible with the of the existing windows. Individual elements which should be addressed include the frame and the pattern of the light defined by the muntins. It is not necessary to exactly replicate the pattern of the existing lights, but this pattern should be reflected by the new windows.

Roof. If the addition will have a roof, it should be consistent with the design integrity of the existing residence. The geometry of the new roof should relate to that of the existing roof. Individual design elements which need to be addressed include the type and pitch of the roof, cornices, rake or gable-end finish, gutters, roof covering, and trim and molding. For example, an addition to a residence with a gable roof should extend the existing roof or match the pitch of the existing roof.

II-3(c): Consistency with respect to scale and mass means that the addition or remodeling should be carefully integrated into the three-dimensional form and proportional relationships of the existing residence.

II-3(d): Consistency of scale and mass between the addition/remodeling and the existing residence is a question of balance. The mass and scale of the former should not overpower or dominate the latter, yet at the same time it should not appear as an appendage or something which was “tacked on”.

Guideline II-4: When a residence is undergoing a major addition/remodeling, consideration should also be given to the exterior appearance of the garage, if it is visible from the street, to maintain architectural compatibility.

Guideline II-6: The siting of the addition/remodeling on a lot should be compatible with the siting of the existing residences along the street on which it fronts. Priority attention should be given to the siting of the addition/remodeling with respect to the residences on either side.

Comments:

- II-6(a): Nothing in this guideline should be interpreted to relieve an addition/remodeling of its obligation to conform to the requirements set forth in Chapter 17 of the City of Piedmont Code. In the event of a conflict, the latter shall prevail.
- II-6(b): In the context of Guideline II-6, the phrase “be compatible with” means that the addition/remodeling should respect the existing front, side and rear-yard setbacks of the houses in the neighborhood so that the overall character of the neighborhood in this respect is maintained.
- II-6(c): If there is a uniform front-yard setback in the neighborhood, the addition/remodeling should respect this setback. There must be compelling reasons if the new addition/remodeling does not conform to the uniform setback. If there exists a range of front-yard setbacks, the setback of the addition/remodeling should fall within this range. In either case, uniform or range of front-yard setbacks, the setback of the addition/remodeling should ordinarily not be less than the residence on either side, unless a lesser setback will not significantly obstruct or reduce the view of the streetscape from these existing residences.

Guideline II-7: The siting of an addition/remodeling, the exterior location of its windows, and the exterior location of appliance ventilation and exhaust ports should respect the visual and acoustical privacy of residences located on contiguous parcels, including their outdoor yards and open spaces.

Comments:

- II-7(a): This guideline shall not be interpreted as an outright prohibition of side yard windows. Rather, the design of the windows of the addition/remodeling should consider their number, size, placement, glazing treatment and dressing in order to respect the visual and acoustical privacy of the residences located on contiguous parcels. Similarly, the ports or exterior wall openings for clothes dryer vents, kitchen and stove exhaust fans, and other appliances should be sensitive to their acoustical impacts on adjacent residences.

DESIGN REVIEW FINDINGS:

To approve this application for design review, the Planning Commission must make findings to support each of the criteria and standards identified below. **The applicants’ proposed findings are indicated in bold.**

(a) The exterior design elements (including but not limited to height, bulk, area openings, breaks in the facade, 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: **See attached.**

(b) The design is appropriate, considering its effect on neighboring properties’ existing views, privacy and access to direct and indirect light because: **See attached.**

(c) 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: **See attached.**

CLEANWATER CONSIDERATIONS

The proposed project will not create *or replace* more than 5,000 square feet of impervious surfaces and will not result in any significant changes to water runoff at the site. Implementation of stormwater treatment Best Management Practices (BMPs) as well as the Bay Area Stormwater Management Agencies Association’s *Start at the Source* criteria for stormwater quality protection is not necessary.

CEQA COMPLIANCE

The proposed project is Categorical Exempt from the provisions of the California Environmental Quality Act pursuant to Article 19, Sections 15300 through 15329.

CITY COUNCIL ACTION REQUIRED:

No City Council action is required unless the decision of the Planning Commission is appealed.