

**MINUTES  
SARATOGA PLANNING COMMISSION**

DATE: Wednesday, February 11, 2009  
PLACE: Council Chambers/Civic Theater, 13777 Fruitvale Avenue, Saratoga, CA  
TYPE: Regular Meeting

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Chair Cappello called the meeting to order at 7:00 p.m.

**ROLL CALL**

Present: Commissioners Cappello, Hlava, Kumar, Kundtz, Rodgers and Zhao  
Absent: None  
Staff: Director John Livingstone, Senior Planner Chris Riordan, Assistant Planner Michael Fossati and City Attorney Jonathan Wittwer

**PLEDGE OF ALLEGIANCE**

**APPROVAL OF MINUTES** – Regular Meeting of January 28, 2009.

**Motion:** Upon motion of Commissioner Hlava, seconded by Commissioner Kundtz, the Planning Commission minutes of the regular meeting of January 28, 2009, were adopted. (6-0)

**ORAL COMMUNICATION**

There were no Oral Communication Items.

**REPORT OF POSTING AGENDA**

Director John Livingstone announced that, pursuant to Government Code 54954.2, the agenda for this meeting was properly posted on February 5, 2009.

**REPORT OF APPEAL RIGHTS**

Chair Cappello announced that appeals are possible for any decision made on this Agenda by filing an Appeal Application with the City Clerk within fifteen (15) calendar days of the date of the decision, pursuant to Municipal Code 15-90.050(b).

**CONSENT CALENDAR**

There were no Consent Calendar items.

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**PUBLIC HEARING - ITEM NO. 1**

**APPLICATION #CUP09-002 (397-06-075) Ron Hills, 18688 Woodbank Road:** The applicant requests Conditional Use Permit approval to locate a 316 square foot accessory structure within a required rear yard setback. The applicant is also requesting a Variation from Standards to exceed the maximum 17,192 (35%) square foot lot coverage by 1,176 (2.4%) square feet and for the building to exceed the eight-foot maximum allowable height by one foot. The gross lot size is approximately 49,122 square feet and the site is zoned R-1-40,000. (Chris Riordan)

Mr. Chris Riordan, Senior Planner, presented the staff report as follows:

- Advised that this project includes a request for Administrative Design Review and a Conditional Use Permit to construct a nine-foot tall accessory structure within a rear yard setback. The request includes Variations from Standards to increase the building height and lot coverage standards.
- Reported that this structure has been constructed without first obtaining Planning or Building Department approvals. The applicant received a Stop Work order on October 15, 2008. Soon after that, the applicant came to the Planning Department to discuss the cabana, which is an accessory structure that would need Administrative Design Review and a Conditional Use Permit since the nine-foot tall cabana was located within the required 20-foot rear lot building setback area.
- Explained that accessory structures are permitted within the required 20-foot setback with issuance of a Conditional Use Permit. The minimum setback is six feet and the maximum height allowed within the minimum setback is eight feet. With every three-foot increase in building setback distance, the structure height could increase by one foot. The maximum height of an accessory structure located within a rear setback area is 10 feet. Outside all setback areas, which is called the building envelope, the maximum height of an accessory structure can be 15 feet.
- Said that the project site is zoned R-1-40,000. The maximum allowable lot coverage for the site is 35 percent. Site coverage, without this cabana, is already 36.6 percent.
- Stated that the applicant is willing to remove some of the existing site coverage. However, the construction of the cabana will increase the site coverage to 37.3 percent.
- Informed that staff can make the findings for the Administrative Design Review approval but cannot recommend that the Planning Commission make the findings for the Conditional Use Permit with Variations from Standards.
- Added that the site is in excess of one acre in size and there are other possible locations on the site for the cabana, which would be outside of the rear setback and would not require a Conditional Use Permit for its location or height.
- Said that the site includes 2,388 square feet of existing artificial lawn. A portion of this artificial lawn could be removed to offset the cabana increase in site coverage.
- Recommended that the Commission find this application to be Categorically Exempt from CEQA; approve this application for Design Review approval by adopting the draft resolution as conditioned; and deny the application for a Conditional Use Permit with Variations from Standards. Staff is not recommending any conditions as permanent.

Commissioner Hlava asked for verification that the net effect of this action would be that the cabana could stay but the applicant would have to take up a portion of the artificial grass to meet the impervious coverage limits.

Planner Chris Riordan said that in order to meet the lot coverage standards, the impervious area would have to be reduced by removing the artificial lawn.

Commissioner Hlava asked if that means the cabana can stay where it is located at the nine-foot height.

Planner Chris Riordan replied no. The Use Permit is for the location and setback of the cabana. Staff is not recommending approval of the location of the cabana in the setback.

Commissioner Hlava said that the net effect then is that the applicant would have to tear down the cabana but would have Design Review approval to put that exact cabana someplace else on the site.

Director John Livingstone clarified that there are two different entitlements. One entitlement makes the other one basically moot. There are separate findings. The findings for Design Review can be met but the findings for the Use Permit cannot, which basically denies the project.

Commissioner Hlava asked if the applicant were to tear down the cabana where it is and construct the exact same design somewhere else without increasing the impervious coverage on the site, would he be able to do that without having to come back to the Planning Commission?

Planner Chris Riordan replied yes. He added that such a request that is not located within a required setback would be handled as a staff-level review.

City Attorney Jonathan Wittwer cautioned that this does not address the portion that is in the setback. The applicant would need defined plans for placement of the cabana in a different location on the site.

Commissioner Hlava said she was a little confused since staff says that the findings can be made in support of Design Review.

Commissioner Rodgers:

- Said she was confused too.
- Added that the Ordinance reads that where the building starts is where the required setbacks must be met for the specific building height requirement.

Planner Chris Riordan said that's right. A specific minimum setback is required for the whole height of the structure.

Commissioner Kundtz:

- Pointed out that there is a great deal of this artificial turf on the property that is deemed to be impervious.
- Reported that during the site visit they flipped this turf “sunny side up” and found that there were drainage holes about every three inches.
- Asked staff to verify that notwithstanding those drainage holes, that artificial turf is still deemed to be impervious.

Planner Chris Riordan confirmed that this turf is counted as impervious. He added that staff counts things that are not considered landscaping as impervious. One can look at that as more of a landscaping requirement so if it's not landscaping it's something else. He added that even gravel is counted as impervious coverage.

Chair Cappello asked for verification that this is not something that staff does arbitrarily but rather it is contained in the Code. Is that correct?

Planner Chris Riordan said that what the Code says is anything that breaks the natural aesthetic of the site. He added that he didn't believe it says “fake grass” but it does say gravel. So anything that does break the aesthetic of the site does count as lot coverage.

Commissioner Rodgers pointed to Plan Sheet A.1-0, which shows flagstone over grass in the area around the pool and in front of the cabana. She pointed out that it is actually artificial turf around the flagstone.

Planner Chris Riordan replied correct.

Commissioner Rodgers asked if the applicant is required to build the building according to Exhibit A, does that mean that they are going to have to rip out that artificial grass and put in real grass.

Planner Chris Riordan asked Commissioner Rodgers if she is asking if they can move that building?

Commissioner Rodgers replied no. She added that it seems like the applicant's site plan shows flagstone with grass when what's actually there is flagstone with artificial lawn. She said that she wanted to make sure that was all counted as impervious. She added that if the Commission does decide to approve this, attention would have to be paid to the fact that the plan current reads flagstone with grass, which may require them to rip up the artificial turf.

Planner Chris Riordan:

- Explained that the flagstones are on cement. The fake grass is added for aesthetics.
- Pointed out that these paving stones get hot in the summer and real grass would not survive. The fake grass stays green all the time.
- Added that in terms of removing some artificial turf, a Variation from Standards would allow the applicant to increase the lot coverage.
- Continued, if the Commission asks the applicant to reduce the lot coverage, he would have to remove the flagstones or remove part of the artificial lawn on the opposite side of the site.

- Said that staff would not tell them specifically what impervious surfaces to take out as long as the net result was a total of 35 percent site coverage. It's up to him to decide what to remove to achieve that level.

City Attorney Jonathan Wittwer asked Commissioner Rodgers if her question is whether what is on site must match the Exhibit? The answer is yes. The plan for the site would have to reflect whatever is approved and what is ultimately there.

Director John Livingstone said that he thinks that what Commissioner Rodgers was noting was that there are inconsistencies between what is on the plans and what is actually on site. He continued that if the Commission does decide to approve this, he would recommend a condition requiring that the plans be amended accordingly. The inconsistency on the plans could be cleaned up.

Commissioner Rodgers thanked Director Livingstone for that verification.

Commissioner Kumar reminded that at the site visit they were told that the lot surfaces were non-percolating, which results in a waterlogging problem on that lot. He asked if there are any studies that have actually demonstrated that fact. Are there any reports on file?

Planner Chris Riordan replied that he believes there are soils reports on file from when the applicant redesigned the existing house but there is nothing on file for this application other than what the applicant recounted during the site visit. The applicant says the soil on site won't perk because it is an old lakebed.

Commissioner Kumar asked if that is a statement that staff could support.

Planner Chris Riordan said that he would support it because it is in the record from the previous approval.

Commissioner Rodgers:

- Asked if there is any information available on whether an old lakebed can become soil that is growable.
- Said that she knows from personal experience that by hand digging and adding lots of peat moss, one can make absolute clay soil into a nice garden area that does perk and does drain. Is there anything like that available?

Planner Chris Riordan cautioned that he is not a soils engineer but said that he does think that is possible. A person can take out a significant amount of the clay on site and replace it with a better type of soil.

Commissioner Rodgers asked if the City has ever required someone to do that. Then she withdrew the question.

Chair Cappello opened the public hearing for Agenda Item No. 1.

Mr. Ron Hills, Applicant and Property Owner:

- Advised that his wife is unable to be here this evening as she is suffering from the flu.
- Reported that his neighbor, Ms. Lois Peterson, who lives on the property directly behind the cabana, is present and supportive.
- Assured that the flagstone with artificial grass in between was counted as impervious surface. It was not counted as real grass.
- Explained that many years ago, when they were remodeling the house, they discovered that they needed to move the pool pump shed. At that time, he came into the City and the desk person there explained the setback rules. He said he was told of a six-foot setback and told that he could use a sloping roof.
- Added that all he wanted to do was make a sloping roof so it matched the house so they did that.
- Continued that when they built this cabana he thought that the same set of rules applied. He added that he didn't realize that about a year ago the City Attorney changed the interpretation of the setback rules.
- Said that he was under the assumption he had built the cabana, based on what he was told back in 2003.
- Added that at the rear of the cabana, they are only about nine inches above the allowed height. At the front of the roof, which is about 26 feet away from the rear property line, that's where they've hit one-foot above the allowed eight-foot height limit.
- Apologized. Said that they just didn't realize and thought it was still a sloping roof thing.
- Stated that they tried to make the whole thing low because they didn't want to block their views or their neighbor's. Said that they wanted to be able to see those trees and mountains behind them.
- Said that when they tried to make it any lower, the aesthetics of the whole thing didn't match the house. They wanted to do a sloping roof so that the whole thing blends together. They made it as low as they could and tried to meet what they had thought were the requirements.
- Said he is sorry for misunderstanding what the rules are today.
- Said that he was once shown a County map from many years ago, when this property was undeveloped. The lakebed was later filled in with a lot of dirt.
- Recounted that when he built the fence, he didn't realize there was clay under there. He said that's the first time he realized what it was, a former lakebed.
- Said that when he remodeled the house and dug out the foundation of the house, they couldn't get the dirt to dry out. They had to keep turning it for almost a month, between May and June, just to get it to dry out. He said that when they redid the swimming pool, which was nine-feet deep, they kept hitting the clay at the nine-foot level. He said that he knows now that the clay starts at a depth of approximately three feet, depending where you are on the property, and goes down at least nine feet.
- Stated that water sits and won't percolate. They had to put French drains in.
- Explained that the reason they put in the artificial turf was because this was such a big area to cover and it would be a waste of water to have real grass there.
- Added that he didn't think that this artificial turf was an impervious problem because it does allow water to percolate through. It is a new type of artificial turf that looks much better than the dirt or weeds it replaced. It costs more to put in but looks better.
- Assured that they tried to make the site look good, to blend in.
- Reminded that his back neighbor has screening landscaping.

- Said their intention was to improve the neighborhood and property.

Commissioner Rodgers asked Mr. Ron Hills if a soils engineer was ever consulted.

Mr. Ron Hills:

- Replied yes. They bored down 15 to 20 feet.
- Added that they had wanted a basement but decided against it as they realized it would require the operation of a sump pump all year round.
- Reported that they have experienced flooding into the house a couple of times with big rainstorms.
- Reminded that they had to put in a lot of French drains. They got drainage waivers as they just cannot percolate water on site.

Commissioner Rodgers said that she is worried as there is a lot of clay in Saratoga. She asked Mr. Ron Hills if he ever talked specifically about how to convert this clay into useable soil.

Mr. Ron Hills replied no. He reminded that this is a big area, about 1.5 acres, where there is a lot to convert. They would have to dig down between six and nine feet and they could not afford that. He recounted that they had wanted to plant palm trees on site but were told that these trees would die, as they don't hold up in water.

Commissioner Rodgers asked about other drought tolerant plants in place of artificial turf. She asked if this site is sitting on top of headwaters.

Mr. Ron Hills replied no. He added that everything around them is higher except for the back, which is lower. He said that water that starts on Woodbank goes into the creek.

Commissioner Kumar said Mr. Hills explains that this was a misunderstanding that occurred when he used regulations he learned about during a previous relocation of a pool pump shed.

Mr. Ron Hills agreed saying, "Yes, that's how I got into trouble."

Commissioner Kumar asked Mr. Ron Hills if he had a plan to show staff at that time of the relocation of the pool pump shed. He asked if Mr. Hills had plans for the cabana that he took in to the Planning Department to discuss.

Mr. Ron Hills:

- Replied no.
- Said that when they build the cabana, they were faced with three major events that summer, a family reunion, Kiwanis event and San Jose Ballet event. They wanted to get that artificial turf in place for those events.
- Added that before that installation, they had to pour the cement in the back because they wouldn't be able to get trucks back there any more once the turf was in place. Since it's more than 100 feet from the street, they would not be able to pump it in. Therefore, they just put the concrete in thinking they were doing it according to Code.

- Stated that trying to lower the cabana now becomes a safety issue, as the support beams would be low enough to hit. Besides, the cabana would look odd without a sloped roof.

Commissioner Kumar asked Mr. Ron Hills if he had considered other locations on site.

Mr. Ron Hills:

- Said that it would have blocked views. This seemed the best place to put the cabana.
- Stated that the cabana could have been moved forward three feet. It would have been all right. If they only had known.
- Said that the concern is how to get equipment there now without tearing up the artificial turf.
- Asked for forgiveness.
- Reminded that it is only 9-inches above height.
- Stated that he cannot afford to move it.

Commissioner Rodgers asked if he ever consulted with the City and showed any plans for this cabana.

Mr. Ron Hills replied no. He reminded that he was dealing with looming event deadlines. He agreed that he should have but didn't do so.

Commissioner Kundtz asked Mr. Ron Hills when he relocated the pool pump shed.

Mr. Ron Hills replied at the end of 2003 or early in 2004.

Commissioner Kundtz said that's about five years ago.

Mr. Ron Hills said yes, approximately.

Commissioner Zhao asked Mr. Ron Hills to identify his preference to his options to either move the cabana to the turf area or lower the cabana height in its current location.

Mr. Ron Hills:

- Said that to move the cabana now is a tremendous job because you'd have to tear the whole thing down, jackhammer out the concrete and get all the debris out of there.
- Added that the only way to get it out of there is to go across the artificial turf, which would tear it all up. Then you'd have to rebuild the cabana. It cost a lot to build in the first place and they don't have the money to do it again.
- Continued that this is a one-time deal. If the City wants him to tear it down then they would just have to give it up.
- Reiterated that they have tried to make it look right. They have tried to make it as low as they could. They thought that they were really matching the Code. The setback thing is the only thing that's different. They thought they were matching the Codes and he didn't realize that the artificial turf was impervious because water could go through it.
- Added that to move the cabana away from the pool wouldn't work with the pool. They'd have to put walkways in to get to it and that is a long area.

Commissioner Zhao told Mr. Ron Hills that he has to sacrifice something. He can't get both. He wants the cabana where it is even though he knows he does not meet the impervious coverage limits or the height requirement. She said that he has to choose. The City wants to work with him here.

Mr. Ron Hills:

- Said that he has looked at a lot of options.
- Suggested that while it could be lowered, one could hit their head on the lowered beam.
- Stated that a flat roof design would destroy the looks. It would look terrible and ruins the aesthetics.
- Reminded that he cannot move the structure forward without tearing it down.
- Admitted that he is kind of caught.
- Reiterated his belief that it would cost too much to tear it down and rebuild it as there is plumbing and power out there.

Ms. Lois Peterson, Resident on Woodbank Way:

- Advised that her home is on the other side of the wall from the Hills' property.
- Added that she has lived here since 1965.
- Informed that she has no objection to this cabana. She sees a bit of the sloping tile roof from her side of the wall.
- Expressed support for what they are doing.

Mr. Ron Hills said that the location of the cabana is the center of the back part of the property. No one can see it but Lois Peterson who sees about two-feet of roof. No other neighbors can see it. He reminded that the intent was not to clutter the skyline but rather to blend in.

Commissioner Rodgers clarified that the required rear yard setback standard is actually 20 feet.

Mr. Ron Hills replied that the setback could be reduced to six-foot to allow a building there.

Commissioner Rodgers said that is possible if you do it with a Conditional Use Permit. It's not six-feet as a right. Twenty (20) feet of setback is required without a Conditional Use Permit.

Commissioner Zhao asked Mr. Ron Hills if his whole property is a former lakebed.

Mr. Ron Hills replied not the whole property. The flat area was. He explained that he has owned this property since 1975 and loves the view and setting.

Commissioner Zhao said that the issues of excess structure height and impervious coverage still need to be addressed.

Mr. Ron Hills again said that he did not think of his artificial grass as impervious.

Commissioner Zhao asked Mr. Ron Hills what he would do to address this and meet the requirements.

Mr. Ron Hills said that he would like to keep the artificial turf but could remove the gravel. He explained that the site's impervious surface is only 32 percent if you count the cabana but not the artificial grass and gravel. He restated the fact that they are on a former lakebed. He reminded that real grass would require a lot of water to maintain.

Commissioner Rodgers pointed out that there is real grass in front.

Mr. Ron Hills agreed and said there is also some real grass in the backyard. He added that when they water, there is a water drainage problem and water runs down into the street. He assured that they do everything that they can to conserve water including extensive use of drip irrigation systems.

Commissioner Rodgers said that there is almost 1,200 square feet that he is asking to be forgiven in impervious surface.

Mr. Ron Hills said that the artificial lawn is 2,688 square feet. That's a big piece but that's also a big corral area it covers. It's the size of a tennis court. He agreed that it is a lot of coverage but it makes this turf look like vegetation and a natural setting rather than the original natural setting of dirt and weeds. He said again that he is kind of stuck and not sure what he can do.

Chair Cappello closed the public hearing for Agenda Item No. 1.

Commissioner Kundtz:

- Stated that he has mixed emotions about this.
- Reminded that Mr. Ron Hills knew to come to the Planning Department five years ago to inquire about relocating his pool pump.
- Said that this summer, when he was going to have three social events, he went out and installed artificial turf over a vast amount of property and had the presence of mind to put in the foundation for a cabana all without checking with the City.
- Stated that the Commission has a very difficult decision to make here based on the cost implications.
- Said that it appears Mr. Hills created a scenario where it is easier to ask forgiveness than it would have been to ask permission.
- Added that he is not sure what staff would have told Mr. Hills had he come in to the counter and made this request.
- Advised that he is really torn on this at the same time that he is sensitive to the cost implications.
- Informed that he would listen to his colleagues' views and reflect further on it.
- Assured that the Commission would do its best to come up with a responsible decision.

Commissioner Zhao:

- Stated that this is a very nice piece of property. She said she loves it.
- Pointed out that right now Mr. Hills is asking for Variations from Standards in two areas, building height as well as amount of impervious coverage.
- Advised that she, like Commissioner Kundtz, is torn.

- Agreed that it is hard to ask Mr. Hills to tear this down but she cannot make the findings to grant these Variations from Standards. This is very hard for the Commission.
- Said that she would hate to see that nice cabana get torn down.
- Stated that this is why she keeps asking Mr. Hills what he prefers. What does he want to do?
- Reiterated that right now, it doesn't meet the Code and she cannot make the findings required for the Variations from Standards.

Chair Cappello asked Commissioner Zhao if she could make the findings for either the height or impervious coverage.

Director John Livingstone said that if height is discussed first, than the coverage and design review are really not applicable. That might be the most difficult one to concentrate on first.

Chair Cappello said that is a good suggestion.

Commissioner Hlava:

- Said that she is in the same place as Commissioner Zhao. She cannot make the findings necessary for this in the way that Mr. Hills would want.
- Added that even if he hadn't built the cabana, he would still be over the allowable impervious coverage with the artificial turf.
- Said that when she looks at all of these things together, it seems that she could make the findings for approval of the cabana if he were to lower the height and remove enough impervious coverage to make up for the size of this cabana.
- Stated that if he is willing to entertain those notions than she could probably make the findings for the whole thing. However, what the Commission is hearing him say is that doesn't work for him because of other issues. In that case, she is with Commission Zhao, and cannot make the findings to support this.
- Reiterated that she would be willing, if the height is lowered on the cabana, to approve the Conditional Use Permit. Again, that doesn't deal with the whole impervious coverage issue and there would have to be some pretty significant changes in what they have back there.
- Advised that one of the reasons this is so tough is that Mr. Hills has taken a 1950's home and has made it into a most gorgeous hacienda with imported things from Mexico. It is absolutely exquisite. She continued to say that she was sure that the cabana, if it met the Code, would be a lovely addition to it but it really doesn't meet any of the rules. That's what makes it so difficult for the Commission because this house is absolutely beautiful.

Commissioner Rodgers:

- Said that she is on the same page with the others who have spoken.
- Agreed that this is troublesome because there are so many other magnificent houses in Saratoga that have been built meeting requirements.
- Stated that this cabana is a problem. The required setback is 20 feet. We're talking about forgiving 14 feet of setback for a cabana having gone in without a Conditional Use Permit.
- Advised that this application has to be looked at as if the cabana isn't already in there. The Commission has to consider if it would grant a Use Permit for that six-foot setback and

she said that she probably would if it met the height requirement of the Code. That could mean a flat roof or a roof with a lower slope.

- Said that there are a lot of people in this town who have put in cabanas with flat roofs.
- Stated that she is not an expert in hacienda type architecture and does not know if it requires a sloped roof.
- Added that a separate issue is the site coverage. She added that she is not sure how they tie together in staff's opinion so she may need some clarification on that.
- Stated that she has a really tough time with the site coverage issue. Saratoga's Code is intended to manage impervious coverage and not to put in artificial turf to make it look pretty but rather so we don't end up with runoff.
- Said that she does not want to see a lot of water coming off a property. Impervious coverage is going to throw that water over the hill to that creek that runs down to Quito.
- Said that drought tolerant landscaping that is native is an option and would look pretty.
- Suggested that the applicant consult with someone on how he could address the soil so it would become useable land. The fact that it is clay is in itself not the end of the story. Artificial turf is not going to be an acceptable solution. She said she just couldn't see it.

Commissioner Kumar:

- Stated his agreement with Commissioner Rodgers on most accounts.
- Agreed that it is a beautiful home that Mr. Hills has designed and built over the years.
- Expressed his wish that Mr. Hills had come and consulted with the Planning Department staff because he believes Mr. Hills would have gotten some very good insight on how to go about placing that cabana.
- Advised that he is really struggling at this point and agrees with staff on the violations of City Code.
- Announced that he would have great difficulty making the findings on this.

Chair Cappello:

- Said that Variances are very difficult to obtain.
- Continued to say that in order to grant one, there has to be some condition by which without the Variance a property owner would be unable to enjoy a privilege associated with their property that others in the area are able to enjoy.
- Stated that when applying for a Variance for the height standard, if the cabana had been moved three feet closer to the home, this owner could have done exactly what he has done and it would have been fine. Therefore, a Variance here doesn't really apply.

City Attorney Jonathan Wittwer:

- Clarified for Chair Cappello that what is sought here are Variations from Standards, which can be approved with a Use Permit.
- Added that the required findings are different for the granting of a Variance versus those required for allowing Variations from Standards.
- Stated that a lot of what Chair Cappello has said could still apply in this situation but he wanted to be sure that the decision made would be based upon the required findings that are outlined in the draft resolution.

Chair Cappello:

- Thanked the City Attorney for this clarification and admitted that he can tend to confuse those two processes.
- Advised that he cannot support the Variations from Standards because of the ability to have built this cabana three feet further to meet these standards.
- Agreed with the applicant that the design itself is important as it relates to the aesthetics of the structure.
- Stated that the problem is that it was built where it was built. It does not pass the smell test.
- Said that with this, the site coverage is a moot point.

Commissioner Kundtz:

- Admitted that if this was his property, that is the place where he too would have logically wanted to locate the cabana.
- Suggested that a compromise on the roof is worth looking into.
- Advised that he was personally surprised that the artificial turf was considered impervious since it does have drain holes.
- Stated that he has to support staff on the issue of impervious coverage.

Commissioner Hlava:

- Outlined that there are two possible courses of action. One would be to remove the cabana. Another option might be to lower its height.
- Suggested that Mr. Hills be asked if he would be supportive of a continuance to allow him time to consider a redesign to lower the height of this cabana.

Chair Cappello asked Commissioner Hlava if, with this solution of the height, she would support the Variation of Standards in terms of impervious coverage.

Commissioner Hlava:

- Replied no. She would want the height brought down to approve the Use Permit for the cabana but there would still be the issue of impervious coverage to resolve.
- Said that another option would be to take a vote this evening but it appears likely that action would be a denial.
- Reiterated that he could be given an option to redesign his plan and deal with those two issues – height and coverage.

Director John Livingstone said Mr. Hills could possibly remove three feet off the rear of the structure to meet Code.

Commissioner Hlava asked if that resolves the impervious coverage.

Director John Livingstone replied no. That would, however, get this building setback into conformance.

Commissioner Hlava suggested inviting Mr. Hills to return and address whether he would like the opportunity to come back with a revised plan.

Chair Cappello re-opened the public hearing for Agenda Item No. 1.

Mr. Ron Hills, Applicant and Property Owner, said he would like an opportunity to evaluate what else might work.

Chair Cappello re-closed the public hearing for Agenda Item No. 1.

**Motion:** Upon motion of Commissioner Hlava, seconded by Commissioner Kundtz, the Planning Commission continued to its meeting of March 11, 2009, consideration of a request for a Conditional Use Permit (Application #CUP09-002) for a cabana, on property located at 18688 Woodbank Road, with revised plans to be submitted to staff for review by February 25, 2009, by the following roll call vote:

**AYES:** Cappello, Hlava, Kumar, Kundtz, Rodgers and Zhao  
**NOES:** None  
**ABSENT:** None  
**ABSTAIN:** None

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## **PUBLIC HEARING - ITEM NO. 2**

**APPLICATION #PDR08-0041 (366-06-016) Kellond, 21925 Arrowhead Road:** The project includes new construction of a new one-story residence, a three-car garage and atrium. The total floor area of the project is 4,355 square feet. The maximum height of the proposed residence will not be higher than 19 feet. Two ordinance-sized trees (a Canary Island pine and Digger pine) will be removed from the property. The net lot size is 75.228 square feet and the site is zoned HR. (Michael Fossati)

Mr. Michael Fossati, Assistant Planner, presented the staff report as follows:

- Provided a materials board and advised that a revised resolution has been distributed with minor technical corrections made by the City Attorney.
- Explained that the applicant is seeking approval for the construction of a new single-story residence consisting of approximately 4,400 square feet. The site will require approximately 360 cubic yards of grading.
- Said that this project is Categorically Exempt under CEQA.
- Reported that all setbacks are met. The maximum height would be approximately 19 feet (at the Atrium roof) while the majority of the house would be approximately 18 feet tall.
- Described the building materials as consisting of stucco, stone veneer and custom wood garage doors.
- Reported that the City Arborist has approved the removal of two pine trees that were in fair to poor condition. The project also received geotechnical clearance and a drainage plan has been submitted.
- Advised that one neighbor to the east had expressed some concerns. Staff and the architect met on site with that neighbor. Since 11 trees would be planted to protect that privacy corridor, that neighbor said he was fine.
- Said that no negative comments were received as a result of the 500-foot notification.

- Informed that all findings in support of this Design Review approval can be made.
- Recommended that the Commission find this project Categorically Exempt and approve this single-story single-family residence.

Chair Cappello opened the public hearing for Agenda Item No. 2.

Mr. Steve Kellond, Project Architect:

- Explained that they had originally proposed this as an addition and remodel, which was approved administratively.
- Reported that when they began construction, it was determined that there were significant failures with the existing foundation. There were cracks and it was crumbling.
- Said that they consulted with both a soils and structural engineer to evaluate what could be done. Since it was determined that only a small portion of the foundation could be retained, it was decided to go with all new construction.
- Stated that there are just minor design changes to the original approval. What was an open atrium is now enclosed.
- Clarified the auto court paving and pointed out that the design of the garage has an offset on the left hand side. It will step back.
- Said that they have tried to design a building that is sensitive to the site. It is all single story in a contemporary design using materials that are compatible with the site.
- Said that PG&E had required the removal of some trees. New trees will be installed following the recommendations of the City Arborist.

Commissioner Rodgers said that this is a wonderful design that she has no problems with. She asked if the atrium roof retracts.

Mr. Steve Kellond replied no.

Commissioner Rodgers said that if it could retract, that would form a natural air conditioning in the summer. She reported that she has an atrium like that in her home and it makes for a great space. She cautioned that the atrium roof must be well anchored as hers flew off in a windstorm nearly going through her neighbor's picture window.

Chair Cappello closed the public hearing for Agenda Item No. 2.

Commissioner Rodgers said that she could make the Design Review findings.

Commissioner Hlava said that she could also. This is a wonderful house.

**Motion:** Upon motion of Commissioner Zhao, seconded by Commissioner Hlava, the Planning Commission granted Design Review Approval (Application #PDR08-0041) to construct a new one-story residence with a three-car garage and atrium and removal of two trees on property located at 21925 Arrowhead Road, by the following roll call vote:

**AYES:** Cappello, Hlava, Kumar, Kundtz, Rodgers and Zhao  
**NOES:** None  
**ABSENT:** None

**ABSTAIN: None**

Commissioner Rodgers thanked Planner Michael Fossati for his work on two reports for this evening's meeting.

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**PUBLIC HEARING - ITEM NO. 3**

**APPLICATION #PDR08-0030 (503-81-015) Kalkunte, 12894 Pierce Road:** The project includes the addition of a second story and attached second dwelling unit to an existing single-story residence. The total floor area of the project is 5,152 square feet. The maximum height of the proposed residence will be not higher than 26 feet. The net lot size is 26,571 square feet and the lot is zoned R-1-12,500. (Michael Fossati)

Mr. Michael Fossati, Assistant Planner, presented the staff report as follows:

- Provided a materials board, a revised resolution with minor edits made by the City Attorney and a new plan sheet (A-3) that was given to staff today. It depicts the front elevation where they want to add an additional window.
- Described the request for a second story addition to an existing single-story residence.
- Said that the project is Categorically Exempt under CEQA.
- Said that the addition consists of 1,500 square feet for a total FAR of approximately 5,100 square feet.
- Added that the applicant is getting a 10 percent increase in allowable floor area with the recordation of a deed restriction on the secondary dwelling unit.
- Said that all setbacks are met and the maximum height would be 26 feet.
- Explained that they are converting the exterior from the current siding to stucco and adding stone veneer and new custom wood garage door. All existing landscaping is to remain.
- Reported that one neighbor expressed concern about impacts on views and privacy. This neighbor was contacted by staff and invited to this public hearing. No other negative comments were received from those receiving the 500-foot notification.
- Said that all standards are met for the secondary dwelling unit and Design Review.
- Recommended that the Commission find this project to be Categorically Exempt under CEQA and adopt a resolution approving this request.

Chair Cappello asked if there was a window there previously where one has been added.

Planner Michael Fossati said no. He added that it is going where the landing of the stairs is going to be.

Chair Cappello asked if the glass would be frosted.

Planner Michael Fossati replied no, it would be regular glazing.

Commissioner Hlava said that it appears there is no privacy impact with this window.

Chair Cappello opened the public hearing for Agenda Item No. 3.

Mr. Guillermo Prado, Project Designer:

- Reported that this project consists of an approximately 1,428 square foot second story addition and approximately 400 square foot secondary dwelling unit, space that is being converted from part of the oversized garage.
- Explained that at the beginning of the project they went to talk with neighbors and showed the elevations. While they tried to meet with the side neighbors, they were not willing to meet.
- Said that the project does not exceed the maximum allowed 26-foot height.

Mr. Mohan Kalkunte, Applicant and Property Owner:

- Thanked the Commission and Planner Michael Fossati for their consideration.
- Reported that his family of five moved into this home about three years ago.
- Advised that they spoke with seven of their neighbors, five of which have two-story homes. Six of those neighbors signed off on this project. One had concerns.

Mr. John Lee, Resident on Pierce Road:

- Explained that his English is not perfect so his daughter stands with him to help.
- Said that he believes that he is the neighbor that is most affected by this project.
- Stated that he is not willing to agree as he feels his privacy from his second story and front yard would be disturbed by this expansion. It would leave an open view into his second story from this new second story addition. The raised height of this building would block his views and diminish the sunlight on his property. It would create more shady area resulting in problems with gardening.
- Expressed concern over potential damage to his property, which is at a higher grade than his neighbor's property, as a result of construction. He said he was concerned that construction could cause failure on his property.
- Reported that he works from his home office and is concerned that construction noise would impact him. It already bothered him when the story poles were installed.
- Said those are his reasons for not agreeing to this project.

Commissioner Kumar asked if the Cypress trees between the Lee property and this project site are on his property or this one.

Mr. John Lee said they were on the neighbor's property.

Commissioner Kumar said that they are very dense and may already serve to block some sunlight.

Mr. John Lee said that they are not big enough to block views of this addition or prevent their potential loss of privacy.

Commissioner Kumar said that there are between 20 and 30 Cypress trees there.

Ms. Lee (daughter of John Lee) advised that these Cypress are not enough to block views into her family's second floor where they have two sets of sliding windows.

Commissioner Kumar said that Mr. Lee raises the concern that his lot could sink because of this proposed addition. Are there any studies to validate that concern?

Mr. John Lee said that as the grade is different on both properties, construction could cause damage.

Ms. Lee added that no study was done, as that would cost money.

Commissioner Rodgers asked if conditioning the permanent retention of these screening Cypress trees would help alleviate the privacy impact concerns of the Lees. Would that help?

Mr. John Lee replied, yes, I hope.

Commissioner Zhao asked Mr. John Lee to elaborate on what he perceives the privacy impacts to be.

Ms. Lee advised that there are two rooms upstairs with sliding glass doors that lead out onto a large balcony at the front of their house. She said that people would see each other from the two homes.

Commissioner Zhao reminded that the Lee home is at a higher elevation.

Mr. John Lee agreed that their house is at a higher elevation but they are worried that they will see the neighbors' second story window.

Kathleen & Ernest Soderstrom, Residents on Pierce Road.

Ernest Soderstrom said that he and his wife have no objections to this project.

Ms. Kathleen Soderstrom:

- Explained that she built the home the Lees now live in and sold it to them.
- Stated that while the Lees may hear construction noise, so would she.
- Pointed out that the Lee home has a second story but their privacy won't be interrupted.
- Stated that the existing trees cannot be seen through too much.
- Said that she lived in that house for 20 years with no obstruction and would find this addition tolerable were she still living there although she understands that different people have different ideas.
- Said that she has no objection to this project except for noise and one cannot have construction without noise.

Mr. Guillermo Prado, Project Designer, said that the Lee property is five feet higher than this property so there is no issue of privacy. He said that a condition to retain the Cypress could be supported.

Mr. Mohan Kalkunte said that there is really nothing he can do about construction noise, as that is a part of construction. He said that he really does not understand the Lees' privacy issue.

Commissioner Zhao said that there are five windows on the rear elevation. She added that she does not recall Mr. Lee's second floor although she realizes the two properties are pretty close.

Chair Cappello pointed to Plan Sheet A-1. A small diagram shows the orientation of the home in relation to the neighbor's home.

Commissioner Zhao said that shows that they cannot see each other.

Mr. Guillermo Prado, Project Designer, said that it is 15 feet from the property line and the homes are offset.

Commissioner Kumar asked Mr. Guillermo Prado if he had taken the neighbor's second story into consideration with his design.

Mr. Guillermo Prado, Project Designer, said that the house is offset due to the slope.

Chair Cappello closed the public hearing for Agenda Item No. 3.

Commissioner Hlava:

- Said that the findings call for evaluation of any "unreasonable" privacy and/or view impacts.
- Reminded that this property is lower than the Lee property and their second story. It is not in the line of sight. There is a row of screening trees that separate the properties.
- Stated that there is a gorgeous Oak tree on the Lee property that also provides screening and privacy.
- Pointed out that the five windows on the back elevation serve a laundry room, bathroom and three in the recreation room. People using a recreation room are usually doing an activity such as watching television.
- Said that on balance, there is no unreasonable interference on the Lees' views and privacy. This addition will not diminish sunlight on their property any more than the existing trees do. The new second story will not sink the Lee property. That is not a valid objection.
- Stated that she can make the Design Review findings.
- Advised that noise during construction is common but there are conditions and/or rules limiting the construction hours.
- Said that this looks like a nice addition.
- Added that it will also be nice to have the second dwelling unit in the City as it helps meet the State requirement for affordable living units.
- Said that she will vote in favor of this application.

Commissioner Kundtz said he could make the findings in support.

Commissioner Zhao said she could make the findings in support.

Commissioner Rodgers:

- Agreed that she too can make the findings.
- Pointed out that the Lee home is on the southeast side and the sun is to the south in the morning in this area.
- Stated that there would be no more of an impact on sunlight than exists under current conditions with the existing trees.
- Said that one concern is the long expanse of roof on the east side that is unbroken with no windows or definition. However, as Mr. Lee would likely prefer it to remain that way, she would raise no objection to that.

Commissioner Hlava pointed out that the Design Review findings include one that states that all existing landscaping would remain. She asked if that covers the permanent retention of the Cypress trees between this property and the Lee property.

City Attorney Jonathan Wittwer said if the Commission wants retention to be permanent, it should be identified as a permanent condition.

Commissioner Hlava said that sometimes Cypress trees knock over and the owner may want to replace it with something different in the future.

Commissioner Rodgers said that this never had to be addressed as a permanent condition of approval but she defers to the City Attorney.

City Attorney Jonathan Wittwer said that the Commission did require on the immediately previous project a permanent a condition requiring up to 11 trees. He said that it is up to the Commission. Perhaps it could be made into a screening requirement that does not state specific trees but rather just a screening requirement.

Commissioner Rodgers said that she is okay with that.

Commissioner Kumar:

- Said that he too could make the findings in support of this application.
- Added that the designer has put the second story where it is out of the line of sight of the Lee property.
- Said that the Cypress trees offer pretty good protection and supported a permanent condition for landscaping screening on that side of the property.
- Said that this is a modest second story.
- Agreed that the second unit is good for the City's housing requirement.

Chair Cappello:

- Informed that he is also supportive.
- Stated that while he can agree there might be some impact, he agrees that it is not unreasonable interference with the Lee home.

- Said that the Lees have a more valued view in their other direction where they have views of the hills.
- Reiterated that this is a judgment call and is not unreasonable.

City Attorney Jonathan Wittwer suggested adding above the standard conditions of approval on the draft resolution a permanent condition that reads, "Maintain screening equivalent to existing Cypress trees along the western boundary."

**Motion:** Upon motion of Commissioner Hlava, seconded by Commissioner Kundtz, the Planning Commission granted Design Review Approval (Application #PDR08-0041) to construct a new one-story residence with a three-car garage and atrium and removal of two trees on property located at 21925 Arrowhead Road, with the added permanent condition for permanent screening along the western boundary as drafted by the City Attorney, by the following roll call vote:

**AYES:** Cappello, Hlava, Kumar, Kundtz, Rodgers and Zhao  
**NOES:** None  
**ABSENT:** None  
**ABSTAIN:** None

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### **DIRECTOR'S ITEMS**

There were no Director's Items.

### **COMMISSION ITEMS**

Commissioner Hlava acknowledged Mary-Lynne Bernald who was in attendance this evening in the audience. She is a newly appointed member of this Commission who will be sworn in soon and begin her service on the Commission.

### **COMMUNICATIONS**

There were no Communications Items.

### **ADJOURNMENT TO NEXT MEETING**

Upon motion of Commissioner Rodgers, seconded by Commissioner Kundtz, Chair Cappello adjourned the meeting at approximately 9:01 p.m.

MINUTES PREPARED AND SUBMITTED BY:  
Corinne A. Shinn, Minutes Clerk