

RESOLUTION NO. R 09-01

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALOS VERDES ESTATES, CALIFORNIA, GRANTING AN APPEAL OF THE ACTION OF THE PLANNING COMMISSION DENYING APPROVAL OF AN AFTER-THE-FACT REVISED NEIGHBORHOOD COMPATIBILITY APPLICATION AT 2220 VIA ACALONES

The City Council of the City of Palos Verdes Estates does resolve as follows:

Section 1. On September 12, 2008, an application (the "Application") for an after-the-fact revised neighborhood compatibility permit for the construction of a chimney at a single family residence approximately 18 to 20 inches higher than the previously approved plans (the "Project") was submitted for the property located at Lot 4 of Block 1635 of Tract No. 7330 in the City of Palos Verdes Estates, County of Los Angeles, State of California, known as 2220 Via Acalones, Palos Verdes Estates, California (the "Property"). The Application was denied by the Planning Commission on October 21, 2008.

Section 2. On November 4, 2008, the denial of the Application was timely appealed on behalf of Libiano Investments, Inc. (the "Appellant").

Section 3. On December 9, 2008, the City Council conducted the public hearing on the appeal, which hearing was duly and properly noticed. At the public hearing, the Council received and considered the written and oral testimony provided by the Appellant and his architect, oral and written staff reports, and documentary evidence, including, but not limited to, site plans, minutes of the Planning Commission meeting, and a photographic presentation.

Section 4. Based upon the evidence presented, the City Council hereby finds and determines as follows:

- a. Each fact set forth in Sections 1 through 3, above, is true and correct.
- b. The Project is exempt from the California Environmental Quality Act (CEQA) pursuant to California Administrative Code Title 14, Chapter 3, Section 15303.
- c. Each fact set forth in the memorandum for Agenda Item No. 13, Meeting Date 12/9/08 from Allan Rigg to Joseph M. Hoefgen, presented to the City Council on said date, is true and correct.
- d. The chimney meets the minimum requirements of the building code.
- e. Other chimneys in the neighborhood are of similar heights.

- f. The chimney is a substantial distance from the uphill neighbor and, if at all, blocks a very insignificant portion of that neighbor's view.
- g. The chimney is part of a new single-family structure that overall has a low profile due to reduction in its height and the lowering of the structure into the grade of the Property.

Section 5. Based upon the findings set forth herein, the City Council finds the Project, as conditioned herein:

- a. is designed and will be developed to preserve to the greatest extent practicable the natural features of the land, including the existing topography and landscaping since the Project does not require any additional grading or removal of major vegetation;
- b. is designed and has been installed in a manner reasonably compatible with the existing neighborhood character in terms of scale of development in relation to surrounding residences and other structures, in that the west chimney is substantially within the confines of the three-dimensional perimeter of the single-family dwelling;
- c. is designed and will be developed in a manner which will preserve to the greatest extent practicable the privacy of persons residing on adjacent properties in that the only new window facing the neighbors will be translucent glass; and
- d. is designed and will be developed in a manner to the extent reasonably practicable so it does not unreasonably interfere with neighbors' existing views, in that the Project will not interfere with the primary view from Appellant's property.

Section 6. Based upon the findings and determinations set forth herein, as supported by the evidence considered in connection therewith, the City Council finds and determines to overturn the Planning Commission's denial of the Application, subject to all the conditions set forth in Resolution No. R06-07 and the following condition:

- a. The height of the fireplace chimneys shall be the minimum allowable per the Building Code and the height of the chimney cap shall not exceed 30".

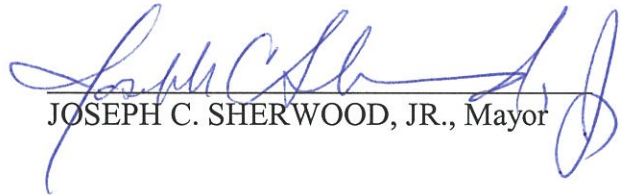
Section 7. Notwithstanding the foregoing and without any express and implied intent to affect the findings and conclusions made in this Resolution, the City Council further determines:

- a. There seems to be an increase in the number of after-the-fact permits being requested through the neighborhood compatibility process;
- b. If such increase is in fact occurring, then it shows an inappropriate, unwarranted and unacceptable disregard for the City's well established processes for balancing the protection of the existing character of the City's residential neighborhoods with the proper enhancement of those same neighborhoods with compatible additions, rehabilitations and new structures;

- c. The City's neighborhood compatibility regulations mandate substantial evidence must exist to support each and every required finding established by those regulations or an after-the-fact approval cannot be granted; and
- d. Any entity or individual who installs unapproved improvements and later files an application for an after-the-fact approval runs a very high risk of being denied such an application and, if so denied, being required to expend substantial costs, time and effort to remove and correct the unapproved improvements and replace those with required and approved improvements.

Section 8. The City Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original Resolutions.

PASSED, APPROVED AND ADOPTED this 14<sup>th</sup> day of January, 2009.

  
JOSEPH C. SHERWOOD, JR., Mayor

ATTEST:

  
\_\_\_\_\_  
JUDY SMITH, City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
JOSEPH W. PANNONE, City Attorney

STATE OF CALIFORNIA )  
COUNTY OF LOS ANGELES ) SS:  
CITY OF PALOS VERDES ESTATES )

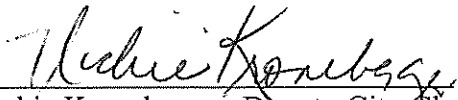
I, Vickie Kroneberger, Deputy City Clerk for the City of Palos Verdes Estates, California, do hereby certify that the foregoing Resolution **R09-01** was duly and regularly approved and adopted by the City Council of the City of Palos Verdes Estates at its regular meeting of the City Council on the 14th day of January, 2009, by the following vote:

AYES: COUNCILMEMBERS: Sherwood, Perkins, Humphrey, and Rea

NOES: COUNCILMEMBERS: None

ABSENT: COUNCILMEMBERS: None

ABSTAIN: COUNCILMEMBERS: Goodhart

  
Vickie Kroneberger, Deputy City Clerk

CERTIFICATE OF MAILING

I, Vickie Kroneberger, am employed by the City of Palos Verdes Estates as Deputy City Clerk. On January 16, 2009, in the course of my duties as Deputy City Clerk, I placed a true copy or copies of Resolution No. R09-01 in a sealed envelope or envelopes addressed as follows:

**Libiano Investments, Inc.  
705 Sunset Drive  
Hermosa Beach, CA 90254**

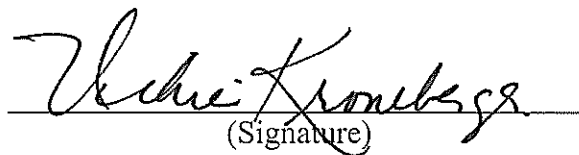
**Patrick J. Killen  
139 Hermosa ave.  
Hermosa Beach, CA 90254**

I placed each such envelope for collection and mailing following ordinary business practices. I am readily familiar with the City's practice for collection and processing of correspondence for mailing. Under that practice, the correspondence would be deposited with the United States Postal Service on that same day, with adequate postage thereon fully prepaid at Palos Verdes Estates, California, in the ordinary course of business.

Executed on January 16, 2009, at Palos Verdes Estates, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

\_\_\_\_\_  
Vickie Kroneberger  
(Type or print name)

\_\_\_\_\_  
  
(Signature)