

City of Brisbane

Planning Commission Agenda Report

TO: Planning Commission For the Meeting of 4/10/14

FROM: Ken Johnson, Senior Planner, via John A. Swiecki, Community Development Director

SUBJECT: 138 Visitacion Avenue; Fence Exception FD-1-14; Fence Height Exception for an approximately 9 ft. retaining wall and fence combination (6 ft. of solid wood fence over up to a 3 ft retaining wall exposure) along the north side and rear property lines; Anna Lam, applicant; Anna Lam Ah Bic Et Al owners; APN 007-271-040

REQUEST: The applicant requests a fence exception for a wooden fence and wall combination exceeding the 8 ft. height limit and without lattice for the top 2 ft, within the rear setback and north side setback at 138 Visitacion Avenue. This would include an approximately 3 ft wall exposure with a 6 foot solid wood fence on top of it.

RECOMMENDATION: Approve Fence Exception FD-1-14 per the staff memorandum, via adoption of Resolution FD-1-14 with Exhibit A containing the findings and conditions of approval.

ENVIRONMENTAL DETERMINATION: Fences are categorically exempt from the provisions of the California Environmental Quality Act per Section 15303(e) of the State CEQA Guidelines. The exceptions to these categorical exemptions referenced in Section 15300.2 do not apply.

APPLICABLE CODE SECTIONS: Brisbane Municipal Code (BMC) Sections 17.32.050.A.1 and 17.32.050.B.2 allows for fence heights of 6 ft and the addition of 2 ft of lattice, for 8 ft total, within the side and rear setbacks. BMC Section 17.02.400 defines the height, as it applies to fences and walls, as the combined vertical distance from the top of the fence to the bottom of the wall (at grade) when the fence is located within 2 ft of the retaining wall. BMC Section 17.32.050.B.5 allows for Planning Commission approval of exceptions to the fence regulations, based on findings which are listed in the next section.

ANALYSIS AND FINDINGS: This application is before the Planning Commission since the fence and wall combination that was recently constructed exceeds the 8 ft. height limit, by approximately 0.75 ft (9 in) and does not include 2 ft of lattice on the top portion of the fence. Up to 2 ft of lattice is allowed when a fence exceeds 6 ft.

F.I.I.

138 Visitacion Ave is a mixed use property within the NCRO-2 Neighborhood Commercial District, with an existing commercial space at the front and a newly constructed single family home at the rear. Construction of the single family home was approved via Design Permit DP-2-09 and Use Permit UP-10-09 in 2009 and the construction is now near completion. During the construction of the home the pre-existing chain-link fence was removed and a new wood fence and wall were built in the rear yard. However, the new fence and wall were not included in the building permit that was approved by the City. The Building Official has indicated that a building permit will be required for the construction of the fence on top of the retaining wall (see draft conditions of approval).

While it is up to the Planning Commission's discretion whether the fence will be of the same essential design or if it will be required to be altered, the existing fence provides a point of reference in the Planning Commission's deliberations on the required findings since the applicant would like to reconstruct the fence and wall in like kind. That is with the exception of replacing the north side wall with concrete instead of wood.

Three findings are required, per BMC Section 17.32.050.B.5, for the approval of exceptions to the fence regulations:

- a. *"The exception is necessary by reason of unusual or special circumstances or conditions relating to the property in order to gain full use and enjoyment of the property."*

The proposal meets this finding. Adjacent properties include the Brisbane Inn parking lot on the north side and a vacant lot to the rear. The rear yard of the subject site is visible from both of these sites as well as from Visitacion and Mariposa Avenues.

The BMC allows for a 6 ft. fence plus 2 ft of lattice, but when a fence is located within 2 ft of a retaining wall the fence and wall height are taken together. In this case, the exposed portion of the wall is approximately 2.75 ft and without the requested exception the fence would be required to be lowered to approximately by 0.75 ft and the top 2 ft of it would be in lattice not solid (ie: 2.75 ft retaining wall + 3.25 ft solid fence + 2 ft lattice = 8 ft). This would provide limited privacy on this very public corner and thereby limit the use and enjoyment of the owner's rear yard. Where-as the existing/proposed fence would provide for privacy within the yard and provides a more orderly appearance as seen from the street than either the pre-existing chain link fence or a three segmented wall/fence/lattice construction.

Note that the design permit which was approved by the Planning Commission in 2009 included a finding and condition which indicated that the then existing 6 ft. chain-link fence would remain, versus construction of an 8 ft wood fence that was then called for in the ordinance to screen neighborhood commercial district sites from the residential district sites. Subsequently in 2011, the Commission modified the fence ordinance which prohibited chain link fences within or adjacent to the residential districts. In terms of materials, the proposed wood fence would be more consistent with the current ordinance and approval of this fence exception would nullify this previous allowance for a chain-link fence.

- b. *“The proposed fence, hedge or wall will not create a safety hazard for pedestrians or vehicular traffic.”*

The proposal meets this finding. The fence and wall will be required to be reconstructed, subject to a building permit and Building Code requirements, so it will not pose a safety hazard to either the users of the subject property or to the adjacent properties. It is not adjacent to a pedestrian walkway, so there would be no pedestrian hazards. Since the proposal is for a rear yard, it will not block views from vehicles at an intersection such that it would pose a hazard. This application was provided to the Building, Fire, Public Works and Police Depts. and no concerns were raised, except the requirement for a building permit, as previously noted.

- c. *“The appearance of the fence, hedge or wall is compatible with the design, appearance and scale of the existing buildings and structures in the neighboring area.”*

The proposal meets this finding. The applicant has proposed that the wall segment facing Mariposa Ave. would be reconstructed with concrete, which would match the concrete foundation for the house. The solid wood fence would be reconstructed in the same form as existing on top of the new wall. The wood retaining wall and fence along the rear lot line would remain or be rebuilt in the same form as it appears.

The combination of the fence and wall is compatible with the design, appearance and scale of the existing buildings and structures in the neighboring area. The combination of the fence and wall provide adequate visual relief and is preferred, versus inclusion of lattice in the top portion which would appear too busy for this scale of fence. The additional height over 8 ft is not a significant increase and would not have a looming appearance.

Attachments:

Draft Resolution with Findings and Conditions of Approval
Applicant's Statement
Staff's Annotated Site Plan and Photographs

RESOLUTION FD-1-14

A RESOLUTION OF THE PLANNING COMMISSION OF BRISBANE
CONDITIONALLY APPROVING FENCE EXCEPTION FD-1-14
FOR A FENCE & WALL EXCEEDING THE HEIGHT LIMIT
WITHIN THE NORTH SIDE AND REAR SETBACKS
AT 138 VISITACION AVE.

WHEREAS, Anna Lam, the applicant, applied to the City of Brisbane for approval of a fence and wall combination exceeding the height limit within the north side and rear setbacks at 138 Visitacion Avenue, such application being identified as Fence Exception FD-1-14; and

WHEREAS, on April 10, 2014, the Planning Commission conducted a hearing of the application, at which time any person interested in the matter was given an opportunity to be heard; and

WHEREAS, the Planning Commission reviewed and considered the staff memorandum relating to said application, the plans and photographs, the written and oral evidence presented to the Planning Commission in support of and in opposition to the application; and

WHEREAS, the Planning Commission finds that the proposed project is categorically exempt from the provisions of the California Environmental Quality Act; and

WHEREAS, the Planning Commission of the City of Brisbane hereby makes the findings attached herein as Exhibit A in connection with the Fence Exception.

NOW THEREFORE, based upon the findings set forth hereinabove, the Planning Commission of the City of Brisbane, at its meeting of April 10th, 2014, did resolve as follows:

Fence Exception FD-1-14 is approved per the findings and conditions attached herein as Exhibit A.

ADOPTED this tenth day of April, 2014, by the following vote:

AYES:

NOES:

ABSENT:

Karen Cunningham
Chairperson

ATTEST:

JOHN A. SWIECKI, Community Development Director

EXHIBIT A

Action Taken: Conditionally approved Fence Exception FD-1-14 per the staff memorandum with attachments, via adoption of Resolution FD-1-14.

Findings:

1. The exception is necessary by reason of unusual or special circumstances or conditions relating to the property in order to gain full use and enjoyment of the property.
2. The proposed fence and wall will not create a safety hazard for pedestrians or vehicular traffic.
3. The appearance of the fence and wall is compatible with the design, appearance and scale of the existing buildings and structures in the neighboring area.

Conditions of Approval:

- A. The applicant shall obtain a Building Permit and rebuild those wall and fence sections required by the Building Department, to comply with the state Building Code.
- B. Rebuilt fence and wall sections shall have a uniform appearance with any existing sections that are to remain.
- C. The wall may be either wood or concrete to match the existing house foundation (materials subject to Building Permit). If concrete, the entire north side exposure shall be of the same material. If wood it shall be of a similar appearance as existing, with a shadow line to break up the overall height.
- D. The fence and exposed portion of the wall combined shall not exceed 9 ft (ie: the fence is not to exceed 6 ft and the wall exposure is not to exceed 3 ft).
- E. No part of the wall or fence shall extend over the property lines onto adjacent properties.
- F. The fence shall be of the same appearance as existing.
- G. Minor modifications may be approved by the Planning Director in conformance with all requirements of the Municipal Code.
- H. This Fence Exception shall expire one year from its effective date (at the end of the appeal period) if a Building Permit has not been issued for the approved project or if the Building Permit, once issued, is allowed to expire prior to final inspection.

Hi Ken,
We would like to have
the retaining wall as
a concrete wall on
the side facing Brisbane
Inn. Thanks,
Anna Lam

SUPPORTING STATEMENTS

FINDINGS REQUIRED TO GRANT A FENCE EX
Brisbane Municipal Code Section 17.32.050

- (a) The exception is necessary by reason of unusual or special circumstances relating to the property in order to gain full use and enjoyment of the property.
- (b) The proposed fence, hedge or wall will not create a safety hazard for vehicular traffic.
- (c) The appearance of the fence, hedge or wall is compatible with the design, appearance and scale of the existing buildings and structures in the neighboring area. (Ord. 483-B, 2003).

What unusual or special circumstances or conditions relating to your property make it necessary for you to install this high of a fence at this location in order to get full use and enjoyment of your property?

Our fence exception application is requesting for a height increase to 9 feet total (fence plus retaining wall from the ground) as opposed to 6 feet (fence plus retaining wall from the ground) which Brisbane's Municipal Code requires.

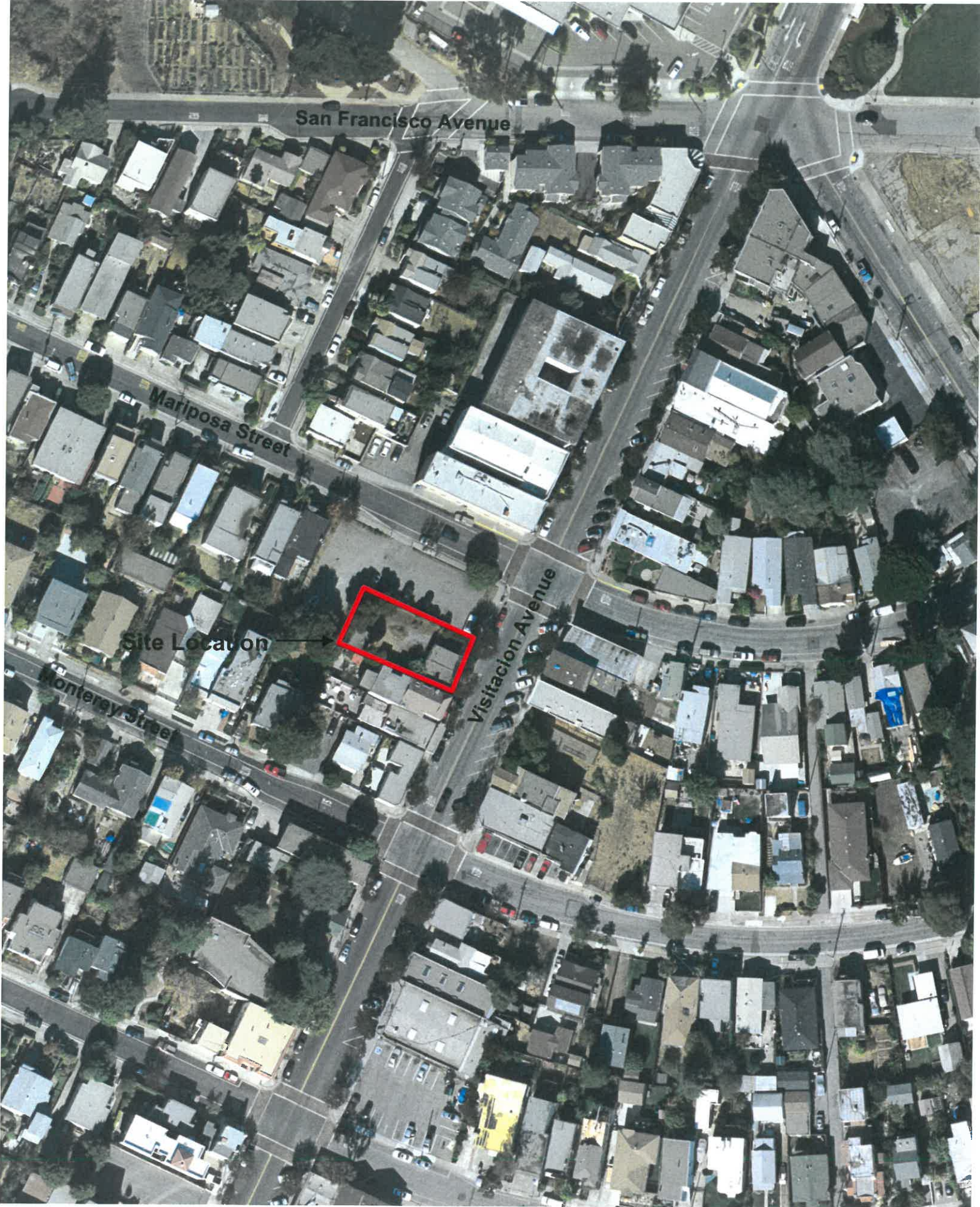
There is a large height of discrepancy between residential property and neighboring parking lot property. If the fence is set to be 6 feet, the height of the fence will be near waist level if you're standing on the residential property's backyard. This is a security and privacy issue for the new residential property and especially so because the neighboring property serves a parking lot for bar customers of Brisbane Inn.

How will the fence (in terms of height, location and materials) be designed so as not to create a safety hazard by blocking the visibility of passing pedestrians, of vehicles entering or exiting driveways, or of vehicular traffic on the street?

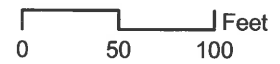
By increasing the height of the fence, it increases safety for the residential home since if the fence remains at 6 feet in height (3 feet from the perspective of the residential property's backyard), then if someone attempts to jump over the 3 feet fence, injury would likely occur. By increasing the fence height, this would minimize the occurrence of anyone attempting to jump from the residential property over the fence into the Brisbane Inn parking lot. In addition, by having a taller fence, this would deter anyone externally from attempting to scale the fence into the residential property. The increased height of the fence doesn't create any safety hazards, in fact it increases safety.

How is the appearance of the fence (height, location, color, materials) compatible with the design and appearance of the existing buildings and structures in the neighboring area?

The appearance of the fence would use wood, which all neighboring properties are using. The color of can be changed to whatever the City deems appropriate.



**138 Visitacion Avenue
Vicinity Map**



F.1.7.

Drawing Annotated by Staff - from Design Permit File

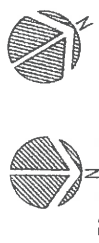
← Parking →
Lot

Proposed Fence/Wall ~ 9 ft. Max Exposure
(6 ft Fence max / 3 ft wall max.)

(E) Accessory structure

Single Family Residence -
Occupancy Pending

(E) Commercial Space



REFERENCE

VACANT

VISITACION AVE.

138 Visitacion Ave
130-132 VISITACION AVE.,
BRISBANE, CA

architects
RIDDLE ASSOCIATES
7 Lehmung Way
Brisbane, CA 94005
415 467 6635
riddleaia@earthlink.net

REVISION	BY

PROPOSED 1ST FLOOR PLAN

Date: 08/20/07
Scale: AS NOTED
Drawn: MLE
Job: 0800
Sheet: A-2.1
Of 1 Sheets

1 PROPOSED 1ST FLOOR PLAN
SCALE 1/8"=1'-0"



F.19.

