

# *City of Brisbane*

## *Planning Commission Agenda Report*

**TO:** Planning Commission For the Meeting of 11/14/2013

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

**SUBJECT:** 8 Thomas Avenue; Design Permit DP-1-13 and Grading Permit EX-1-13; Design Permit and Grading Permit for Development of an approximately 5,110 square foot Single Family Home with associated grading of approximately 1,850 cubic yards on a Ridgeline Lot within the R-BA Brisbane Acres Zoning District; Mahn Quach, applicant/owner; APN 007-350-340

**Request:** This application for design review on the development of a new single family home at 8 Thomas Avenue was continued from the meeting of October 10<sup>th</sup>, 2013. This was to allow for continued public comment and to address questions raised by the Planning Commission. These questions are addressed in the discussion section of this agenda report.

**Recommendation:** Conditionally approve Design Permit DP-1-13 and Grading Permit EX-1-13 per the staff memorandum with attachments, via adoption of Resolution DP-1-13/EX-1-13 with Exhibit A containing the findings and conditions of approval.

**Environmental Determination:** The Brisbane Acres is within the San Bruno Mountain Habitat Conservation Plan (HCP) area and new construction within the Brisbane Acres is subject to environmental review under the California Environmental Quality Act (CEQA). A mitigated negative declaration (State Clearinghouse No 2005042156) was approved by the Planning Commission via adoption of Resolution ER-4-05 on September 22, 2005. The mitigated negative declaration concluded that all environmental impacts will be less than significant or will be reduced to less than significant levels by mitigation measures. The proposed redesign of the house is not considered to be a substantial change that will involve new significant environmental effects or substantially increase the severity of previously identified effects, consistent with State CEQA Guidelines Section 15162(a).

**Applicable Code Sections:** Brisbane Municipal Code Section 17.12.040.L requires a Design Permit for Ridgeline Lots in the Brisbane Acres. The findings required for the approval of Design Permits are contained in BMC Sections 17.12.040.L.2 and 17.42.040. Brisbane Municipal Code Sections 15.01.081 and 17.32.220 require, in addition to approval by the City Engineer, approval by the Planning Commission shall also be required for projects involving grading of over 250 cubic yards of material.

**Discussion:** In the Planning Commission's meeting of October 10<sup>th</sup> several questions were raised by the Commission. These are addressed as follows:

G.1.1

Ridgeline Ordinance Clarification: The Commission requested clarification on the ridgeline ordinance (BMC Section 17.12.040.L.2), its background, its applicability to development on the Thomas Ave. ridgeline, how it addresses views generally of the San Bruno Mountain State and County Park versus blockage of the ridgeline of the State and County Park and if there are thresholds for the required finding for ridgeline parcels.

*Ordinance History:* Prior to the current ordinance which requires a design permit for a ridgeline site, the Brisbane Acres zoning prohibited ridgeline development. BMC Section 17.12.040.L stated, "*Structures shall be located below ridgelines in a manner that will preserve public views of the San Bruno Mountain State and County Park.*" Under this provision any proposal on a ridgeline was subject to a variance.

There were a number of concerns with this approach. For example the use of a variance procedure raised legal concerns regarding potential regulatory takings if a variance were to be denied. Additionally, experience on previous applications at 8 Thomas, 88 Thomas and 2 San Diego Court illustrated that there was a lack of clarity and high level of uncertainty regarding the definition of a ridgeline and what constituted a "public view", etc. These factors led to the conclusion that the ordinance language was problematic for staff, the community, property owners, and the Planning Commission and City Council.

On the basis of these concerns the City went through a process to amend its ridgeline ordinance in 2011. This process involved four Planning Commission workshops and two public hearings, and was ultimately recommended for approval by unanimous Planning Commission vote (4-0). The Planning Commission recommended ordinance was unanimously adopted by the City Council with no changes. Relevant excerpts from staff reports pertaining to the Ordinance adoption process are attached here-in to provide further detail. .

*Current Ordinance Provisions:* The ridgeline ordinance calls for preservation of the public views of the San Bruno Mountain State and County Park that are found to be of community wide value as seen from the Bay Trail. As stated, "*The planning commission shall find that the building's placement, height, bulk and landscaping will preserve those public views of the San Bruno Mountain State and County Park as seen from the community park and from the Bay Trail along the Brisbane Lagoon and Sierra Point shorelines that are found to be of community-wide value.*" In applying this finding to specific projects there are a few key points to be considered.

The ordinance clearly allows for development on the Thomas Avenue ridgeline parcels but requires a design permit for these parcels. A copy of the ridgeline map from the ordinance is included for reference. The intent of the ordinance is to preserve views of the San Bruno Mountain State and County Park, not to preserve the Thomas Avenue ridgeline. Only those properties identified on the map are subject to the ordinance. Properties within Central Brisbane, including the apartment buildings across the street on Thomas Avenue and further up the ridgeline across San Bruno Avenue are not subject to the ordinance since these are not within the Brisbane Acres.

While the ordinance clearly identifies those properties which are subject to it, the ordinance does not establish a specific bright-line threshold as to what is permitted or not permitted on those

parcels. For example, there is no specific prohibition in the ordinance against a development blocking a portion of a ridgeline which is within the State and County Park. Rather, the ordinance calls for a case-by-case analysis and for the Planning Commission to make a determination based on this analysis as to whether the proposal takes adequate steps in its design to preserve those views of the State and County Park that are of community wide value.

The ordinance also provides the Commission with the tools to modify a project to ensure that it complies with the required finding. As stated in the ordinance, "*...methods to accomplish this may include varying the building's roofline to reflect the ridgeline's topography, orienting the building to minimize the impact of its profile upon public views, locating the building on the lower elevations of the site, and reducing the building's height below the maximum permitted in the district.*"

At the Commission's discretion these methods may be applied through either conditions of approval, or through the review of modifications made by the applicant during the design review process. If the applicant is unwilling to make suggested changes or does not agree to recommended conditions such that the Planning Commission cannot make the required design review findings for approval, the Planning Commission has the right to deny the application. In this case, pursuant to BMC Section 17.01.110, a substantially similar application may not be filed within 1 year of the decision. The issue of permit timing is further discussed at the end of this agenda report.

As previously discussed and shown in some of the photos, there is some blockage of the ridgeline. The question to be considered is whether the degree of blockage of the ridgeline from certain vantage points is deemed to comply or conflict with the provision stated above.

Private Views: During the October 10<sup>th</sup> Planning Commission meeting the issue of private view impacts was raised, since some private views would be impacted by the development. The ordinance does not protect private views or prohibit development from impacting private views. There is a required finding that the "*proposed buildings and structures are designed and located to mitigate potential impacts to adjacent land uses.*" The finding does not address other impacts beyond those to adjacent properties. By the City's definition of adjacent properties (BMC Section 17.02.025), included are properties that are "*physically close to, such as to the side or rear of or located directly across the street*". It would not include properties further way from the site, such as properties on Sierra Point Road or Ross Way.

While staff identified private views from the apartment building across the street on Thomas Avenue as the primary potential impact on adjacent land uses from the development, the finding is generally taken to address factors such as glare or shadowing effects, or privacy from proposed building(s), which, for example, due to scale and/or locations of windows might loom over another property. As indicated on October 10<sup>th</sup>, the proposed building would be smaller in its overall bulk than the previously approved plan and of similar height. It would be located at least 15 feet from its nearest lot line and although quite visible by dint of its location, height and setbacks it would not loom over the surrounding properties or result in other significant impacts on adjacent land uses. Even if the potential view impacts on the 12 unit apartment building at 71 Thomas Avenue, were under consideration, these view impacts would be limited. A review of

the plans for these apartments, built in 1974, shows that the bedrooms and bathrooms are located on the Thomas Avenue side, while the kitchen and living room spaces, with the larger windows and balconies, face out over Central Brisbane.

Additionally, the construction of the apartment building pre-dated the original ordinance which prohibited ridgeline development in the Brisbane Acres and there would have been no expectations under the regulations at the time that the views from this secondary side of the building would be protected. Similarly, protection of private views beyond the adjacent sites, such as those mentioned on Ross Way or Sierra Point Road, would not be protected under the ordinance.

Photographic Representations: Concerns were raised at the last Commission hearing regarding the accuracy of both staff's photos as well as those presented by Storrs Hoen. Commissioner Cunningham has submitted her own photos taken from the same locations as those identified in Mr. Hoen's original photo set and submitted those for inclusion in this report. Mr. Hoen has submitted a new set of photos and letter and they are attached for reference. Staff's original photographs are also attached, so all three sets of photographs are provided as requested by the Planning Commission. It was also requested of the applicant that photo-simulations be provided to depict the proposal from the Bay Trail. These have been provided by the applicant and are included herein.

The photographs provided by staff were intended as a visual tool to assist the Commission in its deliberations on this matter. As previously described, staff's photos were taken at 300 ft intervals from the Bay Trail along the waterfront side of Sierra Point Parkway at the Lagoon and from the Bay Trail at the Sierra Point subarea. The photos were taken with zoom lenses and may present a worse case than the naked eye, as explained in the previous report, with the aim of evaluating where the story poles crossed over into the view corridor of the State and County Park. The photos present a narrower view, more focused on a particular subject, than reality and are intended to help in documenting where there might be impacts especially at such long distances. However they do not purport to simulate or substitute for the in-person viewing experience.

Rather, the intent of the ordinance requirement to install story poles is to allow the Commission and the community to have a first hand visual reference for the project and not have to rely solely on photographs or visual simulations. This allows the Commission and community to visit the portions of the Bay Trail where view impacts may be perceived, have a first-hand view and draw their own conclusions as to the significance of the view impacts. The Commission is under no obligation to utilize the photographs as a basis for making their findings in this case.

88 Thomas Avenue Comparison: Further information was requested on the approved application for 88 Thomas Avenue, which is adjacent to 8 Thomas to the east. Excerpts from that approved variance application are provided with this agenda report. It should be noted that the application for 88 Thomas was not subject to the current ridgeline regulations, but rather was subject to the previous ordinance. The proposed residence at 88 Thomas is similar to the current 8 Thomas proposal in size as well as in how it is proposed to be situated on the site. Its major difference appears to be that its location is not in the view corridor gap of the Thomas Ave. ridgeline,

immediately adjacent to San Bruno Ave, and so its impacts on private views were inconsequential. This application was not subject to a high degree of public interest. Also, while it would also block views of the San Bruno State and County Park and its ridgeline, from certain locations, its impacts may have been perceived as less than 8 Thomas Avenue given the presence of large trees which already screen those views, although some of these trees are to be removed.

In reviewing the approved plans for 88 Thomas Ave., note that a different reference elevation was used in the elevations for 88 Thomas Avenue. Based on staff's review of the topographic maps the correction factor is approximately 36 feet. Given that, the elevation of the proposed 88 Thomas Ave. home at the location nearest to 8 Thomas would be approximately 3 ft higher than that proposed for 8 Thomas Ave. and approximately 15 ft higher as the building rises to 2 stories on the west side of that lot. The height of the remaining story pole at 88 Thomas Ave. is higher than the final elevation that was approved for that east side of the home by approximately 12 feet.

Boundary of State and County Park: There was a request that the boundary of the State and County Park be identified on the photos. While the boundary is mapped in plan view (see the attached State and County Park map and previously provided aerial photos), the exact boundary between Central Brisbane and the State and County Park must be inferred based on physical landmarks which show up in the photos. The best landmarks for this are the presence of the uppermost homes of Central Brisbane, which shows up in the photos.

Landscaping: The issue of landscaping requirements was raised by the applicant's architect and further questioned by the Commission. The landscaping was approved as mitigation measures for the environmental review under the California Environmental Quality Act (CEQA) and the San Bruno Mountain Habitat Conservation Plan (HCP) permit. Minor modifications to the landscaping, such as changing out tree species for other species that are in keeping with the requirements of the HCP, may be approved as conditions, subject to review by the HCP administrator and the City. However removal of specific mitigation measures would necessitate a review of (and potentially an addendum) the Mitigated Negative Declaration and the Habitat Conservation Plan permit, which otherwise remain valid for this project.

Findings: To approve the Design Permit, the Planning Commission must make all of the applicable findings required by Brisbane Municipal Code Sections 17.12.040.L.2 and 17.42.040, as detailed in the previous agenda report and as provided in the attached draft resolution. All of the applicable findings have equal standing in that all of them must be met to grant approval. However, with any given application, the specifics of the project site and design will typically raise one or more of the findings to be of greater concern to the community over the others.

Permit Timing: Under the State of California Permit Streamlining Act (PSA) the City has 60 days following determination that the project application was complete and subject to the adopted mitigated negative declaration. The City has a deadline of November 29, 2013 to act on this project. Under the PSA the City may grant a one time extension of up to 90 days upon written request by the applicant. The next regular meeting would have been November 28<sup>th</sup> (Thanksgiving Day), so the Planning Commission will be obligated to act on the project on November 14<sup>th</sup> or schedule a special meeting. Failure to act within the prescribed deadline would result in the project being deemed approved pursuant to the PSA. Alternatively, an extension

may be requested by the applicant, which would be subject to the Planning Commission's approval.

As such the Commission's options are the following:

- Approve the project as presented
- Approve the project with modified conditions
- Deny the project
- Deny the project without prejudice (would allow the applicant to return with another application within 1 year)
- Grant an extension of up to 90 days if requested in writing by the applicant.

Any action for approval or denial would require the appropriate findings pursuant to the requirements of BMC Sections 17.12.040.L.2 and 17.42.040.

Attachments:

- A. Draft Resolution with Findings and Conditions of Approval
- B. Table 1 Project Description
- C. Ridgeline Ordinance background documents
- D. Applicant's photo simulations
- E. Staff's photos
- F. Karen Cunningham's photos
- G. Storrs Hoen's letter and new photos
- H. 88 Thomas Avenue Variance V-5-11 excerpts
  - I. State and County Park map
  - J. October 10, 2013 staff report