

City of Brisbane

Agenda Report

TO: Honorable Mayor and City Council

FROM: Community Development Director via City Manager

SUBJECT: **8 Thomas Avenue;** Appeal of the Planning Commission's approval of Design Permit DP-1-13 and Grading Permit EX-1-13 for Development of an approximately 5,110 square foot Single Family Home with associated grading of approximately 1,850 cubic yards on a 16,978 sq ft, ridgeline lot within the R-BA Brisbane Acres Zoning District; Mahn Quach, applicant/owner; APN 007-350-340

DATE: Meeting of March 3, 2014

City Council Goals:

To preserve the unique current character of Brisbane (Goal #16).

Purpose:

To consider the above-referenced appeal.

Recommendation:

Uphold the Planning Commission's approval of the above referenced applications per the findings and conditions of approval set forth in attached Resolution DP-1-13/EX-1-13.

Background:

The proposal involves a design permit and grading permit application to construct a 2-story 5,110 square foot residence at 8 Thomas Avenue. The site is designated a ridgeline lot within the R-BA- Brisbane Acres Zoning District and is therefore subject to a design permit. The Planning Commission held public hearings regarding this project on October 10th and November 14th 2013, and unanimously approved (4-0) the project on November 14th. Planning Commission staff reports, minutes and related correspondence from these meetings are attached.

The current proposal is not the first application processed by the City on this site. In 2006, a slightly larger (5,500 square foot) single family residence of similar design was approved via variance V-1-06. Approval of variance V-1-06 allowed for the following:

- The home was proposed to be located on a ridgeline parcel;
- Allowable lot coverage of 4,810 sq ft, approximately 566 sq ft over the 25 percent limit;
- Encroachment of residence within the north side setback.

However, the variance expired before a building permit was issued. Subsequent to approval of the variance in 2006, the City adopted new Zoning Code provisions regulating ridgeline development and the current application is the first such application to be considered under these provisions. The home design was subsequently modified to eliminate the need for lot coverage and setback variances. No variance is required to allow for development on a ridgeline. Under the updated ordinance ridgeline development is subject to a design permit which is the application now under consideration.

Ridgeline Regulation History

The City's zoning regulations governing ridgeline development are based on and responsive to a series of policies in the General Plan. General Plan Policies 16, 17, and 83 and Programs 17a, 17b and Program 19a address ridgeline protection, while Policies 4, 5, 6, 19 and 20 and Program 19b relate to private property rights and City development regulations. These referenced programs and policies are attached. In combination, these policies and programs strive to strike a balance between protecting ridgeline and mountain views for the public's benefit while recognizing private property rights.

Prior to the 2011 Code amendment, 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 practical difficulties with the previous ordinance language. For example, 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" for purposes of the ordinance. The prohibitive nature of the regulations and reliance on a variance procedure raised legal concerns regarding potential regulatory takings if a variance were to be denied for a privately owned lot. These ongoing implementation concerns were problematical for the community, property owners, staff, and the Planning Commission and City Council.

On the basis of these concerns, the City amended its ridgeline ordinance in 2011. Following the Planning Commission's unanimous recommendation for approval, the ordinance was unanimously adopted by the City Council on October 3rd, 2011.

Current Ordinance Provisions:

The adopted ridgeline ordinance calls for the 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 or Community Park. As stated in BMC Section 17.12.040.L.2, "*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. 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."

The amended ordinance language responds to a number of the previously-noted concerns associated with the previous regulations. The amended ordinance clearly identifies those private properties which are ridgeline properties subject to the ordinance provisions. It further identifies the public views to be preserved (views of San Bruno Mountain State and County Park), and public viewing locations (Community Park and Bay Trail) from which these views are to be evaluated. Additionally, city review is accomplished through the design permit process, with the required finding noted above and suggested means and methods for achieving compliance.

While the amended ordinance provides procedural clarity and includes a specific finding required for approval, it is recognized that the process of determining whether or not a particular project complies with the required finding remains a subjective decision on the part of the Planning Commission or City Council, based on a case-by-case analysis. While ridgeline development is an extremely sensitive issue, the process of analyzing a specific application through a public hearing process and determining a project's conformity with required findings is no different than what is required for any other discretionary application processed by the City, such as use permits, design permits and variances.

To assist in the evaluation of project impacts on public views, the ordinance requires the installation of on-site "story poles" reflecting an accurate representation of the proposed building height at building corners and roof peaks. Story poles were installed at 8 Thomas in advance of the Planning Commission hearings and remain in place.

Discussion:

The appeal filed on this application raised the following issues which are addressed below:

1. The application of the ridgeline ordinance (Section 17.12..040.L.2) and how it is applied and measured.

The background section above describes the ordinance requirements and applicability. The proposed residence at 8 Thomas Avenue is clearly subject to the ordinance and the required finding, *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.*

The October 10 and November 14, 2013 Planning Commission reports contain a detailed analysis of the proposed project relative to this finding as well as all other findings required for

project approval. Below is a summary of the key issues raised in consideration of the application relative to the noted finding:

- a. *Would the development result in view impacts on the San Bruno Mountain State and County Park as seen from the Bay Trail at the Lagoon or Sierra Point and/or the Community Park?*

Yes. Based upon the visual observation of the story poles the proposed development at 8 Thomas would result in view impacts on the San Bruno Mountain State and County Park from some portions of the Bay Trail along the Lagoon and the Sierra Point waterfronts.

- b. *If so, are the views that would be impacted be of community wide value?*

During the public hearing process there was considerable discussion and public difference of opinion as to whether or not the project would compromise views of community-wide value. Based on the analysis and testimony provided, the Planning Commission ultimately determined that views of community-wide value were not compromised by the project and the required finding for approval could be made.

- c. *Does the proposal take adequate steps in its design to preserve those views?*

The Planning Commission took into account the steps taken in the design to minimize view impacts on San Bruno Mountain State and County Park. These included placement of the home as far down on the lot as possible while maintaining the required butterfly corridor at the rear of the lot, maintaining a building height of 27 feet (below the 35 ft height limit otherwise allowed in the Brisbane Acres) , keeping the roofline at a relatively low pitch while in keeping with the style of the home, orientation of the home on the site such that bulk of the home is minimized (straight vs. oblique view) from the primary viewing angles as seen from the Bay Trail, and excavation to integrate the first floor of the home into the hillside.

2. *Concerns about the home's proposed open courtyard and relevance to the floor area ratio (FAR)*

The proposed home includes a 585 square foot unroofed interior courtyard. This area is proposed with an interior deck on the main level (second floor). The lower level, below the deck, is proposed to be landscaped, subject to Planning Director approval of the landscaping. This feature was also part of the 2006 approved design.

“Floor area” is defined in the Brisbane Municipal Code (Section 17.02.315) as the “*sum of the gross horizontal areas of all floors of a building measured from **the interior face of the exterior walls or columns**, but excluding any area where the floor to ceiling height is less than six (6') feet...*” Inasmuch as none of the uncovered courtyard lies within the “**interior face of the exterior wall**” the courtyard does not count as “floor area” and does not count in the calculation of floor area ratio (FAR). FAR is defined in BMC as *the floor area of all buildings on a lot divided by the total lot area*. The FAR for this proposed residence is 0.30, well below the

maximum FAR of 0.72 allowed in the Brisbane Acres. A related provision within the Brisbane Acres development regulations limits home size to maximum floor area of 5,500 sq ft. The courtyard is excluded from the floor area calculation, and the proposed residence has a floor area of 5,110 sq ft.

Another closely related development provision is the lot coverage maximum of 25 percent. As with the floor area calculation, the proposed courtyard is not included in the lot coverage. Lot coverage is defined in BMC Section 17.02.495 as *“that percentage of a lot that is covered or occupied by structures. Lot coverage includes any finished surface, such as a slab or deck, which is covered by a roof or other solid covering with at least seven (7) feet of clearance, other than an eave or overhang, and includes also cantilevered bays and other enclosed architectural projections which contain floor or seating area.”*

The open courtyard does not include a roof and thus does not count against lot coverage. The project lot coverage is 4,242 sq ft, which is just under the maximum allowed of 4,244 sq ft. Note that the home approved in 2006 obtained a lot coverage variance to allow for lot coverage of 4,810 sq ft, exceeding the lot coverage limit of 25%, by approximately 566 sq ft. The figures under the previous variance also excluded the courtyard.

3. *Inclusion of public comments in the record*

All written and emailed public comments submitted on this matter were provided to the Planning Commission either before or at the Planning Commission meeting, depending on when they were submitted. All such comments are part of the record and have been provided to the City Council, along with all written or email comments received by the City subsequent to the Planning Commission’s decision.

Fiscal Impact:

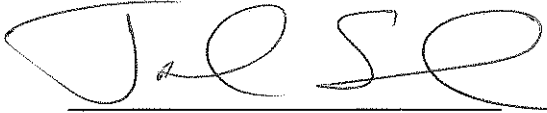
None.

Measure of Success:

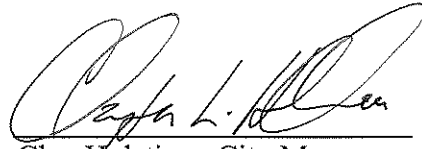
Final City Council action on this appeal.

Attachments:

- A) Appeal Letter
- B) Site Maps and Project Plans (Site Plan, Elevations, Floor Plans)
- C) Relevant General Plan Policies and Programs
- D) Correspondence Following Planning Commission Approval
- E) Report from the Planning Commission, Including
 - Resolution DP-1-13/EX-1-13
 - Planning Commission Minutes (October 10 and November 14, 2013)
 - Planning Commission Agenda Reports (October 10 and November 14, 2013)
 - Planning Commission Correspondence

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John Swiecki, Community Development Director

Handwritten signature of Clay Holstine in black ink, appearing as a cursive script.

Clay Holstine, City Manager