

City of Brisbane

Planning Commission Agenda Report

TO: Planning Commission For the Meeting of 5/12/11

FROM: Tim Tune, Senior Planner, via John Swiecki, Community Development Director

SUBJECT: Zoning Text/Map Amendment RZ-3-11, Study Session on R-BA Brisbane Acres Residential District Ridgeline Development Regulations

Request: Housing Element Programs H.H.2.b, H.H.2.c and H.H.2.d call for amendments to the R-BA Brisbane Acres Residential District chapter of the Zoning Ordinance regarding density transfer and clustered development. Consistent with General Plan Policy 6, additional changes to simply and clarify the R-BA District's side and rear setback requirements and floor area ratio standard have been suggested. This would also be an opportune time to consider potential changes to the R-BA District's ridgeline development provisions. Preliminarily proposed revisions are attached.

Potential amendments to the R-BA Brisbane Acres Residential District chapter of the Zoning Ordinance and to the Zoning Map were preliminarily discussed at the study sessions on February 10th, March 10th and April 28th. This study session continues the previous discussion of the ridgeline development provisions.

Recommendation: Provide direction to staff to prepare a draft ordinance for recommendation to the City Council, and adopt the attached draft Resolution No. RZ-3-11a to formally initiate the zoning text/map amendment process.

Ridgelines: Brisbane Municipal Code Section 17.12.040.L simply states, "Structures shall be located below ridgelines in a manner that will preserve public views of the San Bruno Mountain State and County Park." This language combines concepts found in General Plan Policy 19 and Program 17a (see attached).

Past Practice. With no other option provided by the R-BA District ridgeline regulations, Variances have been required for any development on a lot through which a ridgeline passes, if any portion of the proposed building would block views of San Bruno Mountain State and County Park from various public facilities, including the Community Park and the Bay Trail along the Brisbane Lagoon and at Sierra Point.

For development proposals at 8 Thomas Avenue, 88 Thomas Avenue and 2 San Diego Court, staff prepared detailed estimates of the heights at which public views would presumably not be blocked from specified angles and viewing locations to give an indication of what construction

might or might not block the full range of existing or potential views. For these proposals, the Planning Commission sought a balance between preserving public views and private property rights through the Variance approval process (see attached General Plan Policies and Programs). Implicit in this approach is the possibility that there might be a specific elevation determined administratively below which development would not be subject to public review.

The City Attorney notes that Variance findings are more difficult to make than Design Permit findings. The potential problem with Variances is that the inability to make the findings could result in a takings claim, if the applicant were prevented from building a home on his or her property. The Planning Commission may be confronted with an undesirable choice between finding a justification for the Variance findings (when the factual basis to do so may not always be present) or subjecting the City to a takings claim if the application is simply denied. This is the type of situation where some accommodation on both sides may produce the best result (e.g. modification of the plans to mitigate the impact on the ridgeline) but Variances do not normally provide this kind of flexibility.

Staff's Suggested Approach: A more direct approach may be to require Design Permit approval, instead of a Variance, for any new structures on properties through which ridgelines run as identified in a version of Figure 4 modified as a direct insert into the Zoning Ordinance (see attached draft Figure 17.02.695). The definition of "ridgeline" would be amended to refer directly to this inserted figure. This design review approach would be consistent with General Plan Program 19b: "Consider amendments to the Zoning Ordinance to provide for site plan review to assure that identified vistas and public view corridors remain accessible for public enjoyment. The review should evaluate building placement, height and bulk." Design review is already required for density transfer projects in the R-BA District (BMC Section 17.12.050.C).

With staff's recommendations and community input through the public hearing process, the Planning Commission would determine the "vistas and view corridors of community-wide value" referenced in General Plan Program 19a (attached) under the approach suggested by staff. This would provide the Commission with more flexibility than the current BMC Section 17.12.040.L's general dictum to "preserve public views," which lacks the nuance of General Plan Policy 19, from which it was apparently derived:

Policy 19: In the context of respecting private property rights, make every effort to preserve and enhance public views of the Mountain and the Bay.

Based upon a preliminary analysis of Open Space Plan Figure 4, topographical information used to draft Figure 17.02.695, the County Parks Department's map of the San Bruno Mountain State and County Park and panoramic photo montages representative of views from various public facilities, staff recommends that attention be focused on those public views of the State and

County Park as seen from the Community Park and from the Bay Trail along the Brisbane Lagoon and Sierra Point shorelines.

The best viewing position from these locations will vary, due to obstructions between the viewer and the proposed development site, such as trees, buildings and landforms. Rather than try to have the ordinance specify viewing locations on the Bay Trail and at the Community Park for the 21 ridgeline properties identified in draft Figure 17.02.695, it would be more practical to determine the best viewing positions once the story poles have been erected. Then, staff can take photographs to document the views to be considered by the Planning Commission in its determinations. Depending upon the size and orientation of the proposed structure, its impact upon public views may vary from one position to another.

The attached photographs illustrate views taken from points 5 ft. above the ground and 6 ft. above the ground at the Community Park. Even though differences between the two are apparent in the foreground, the differences in the distant view are not discernable. Thus, whether a viewer is taller or shorter will not make a significant difference in the view seen at a distance.

The design review process suggested by staff would provide a public forum in which “vistas and view corridors of community-wide value” could be discussed in the context of a specific ridgeline site. To provide the public and the Planning Commission something more concrete to visually assess, applicants would specifically be required to erect story poles on the site, certified by a qualified licensed professional to represent the height of the proposed building at its corners and roof peaks, in addition to the standard Design Permit application submittal requirements in BMC Section 17.42.020. This approach has proven to be effective in reviewing past proposals for ridgeline development, particularly in comparison to other means of estimating the potential visual impact of a proposal.

Staff suggests that, by combining elements of General Plan Programs 19a and 19b, Section 17.12.040.L could be revised to read:

L. Ridgeline. ~~Structures shall be located below ridgelines in a manner that will preserve public views of the San Bruno Mountain State and County Park. Development on any site through which a ridgeline runs as identified in Figure 17.02.695 shall be subject to design permit approval.~~

1. *In addition to the required contents of application for design permit set forth in Section 17.42.020.A, story poles certified by a licensed architect, surveyor, civil engineer or contractor to represent the height of the proposed building shall be erected at the locations of its outer corners and roof peaks according to a plan pre-approved by the Community Development Director. The*

upper one foot length of each pole shall be painted OSHA yellow so as to be clearly visible from a distance.

2. *In addition to the findings required for issuance of design permit set forth in Section 17.42.040, the Planning Commission shall find that the building's placement, height and bulk 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.*

Subsection 2 would supplement the Design Permit finding already required in BMC Section 17.42.040.D:

D. For hillside development, the proposal respects the topography of the site and is designed to minimize its visual impact. Significant public views of San Francisco Bay, the Brisbane Lagoon and San Bruno Mountain State and County Park are preserved.

It may be helpful to cite examples in the ordinance of how buildings can be designed to minimize their impact upon public views of the Mountain:

2. *In addition to the findings required for issuance of design permits set forth in Section 17.42.040, the Planning Commission shall find that the building's placement, height and bulk 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.*

This would provide applicants some guidance in designing their projects in advance of the public review process.

Other Alternatives. An entirely different approach, based upon General Plan Policy 17 and Program 17a (attached), would concentrate on those portions of San Bruno Mountain where development might actually "break" the ridgeline, altering the Mountain's silhouette by blocking a current view of the sky above the Mountain. The main ridge of San Bruno Mountain runs through Unrecorded Brisbane Acres Lots 105, 101, 41, 48 and 47, with Lots 40, 59 and 70 being

just below it (see attached comparison map), so development on these properties might “break” the ridgeline. When viewed from the Bay Trail or the Community Park, though, there are other properties lower in elevation on which development could have a similar effect, but these lesser ridgelines have already been “broken” by existing development. These include Lots 35 & 36 and the properties surrounding Thomas Hill. The remaining ridgeline properties are generally situated where their development would not affect the Mountain’s silhouette from public viewing locations.

This alternative would potentially reduce the list of regulated properties in the Brisbane Acres by about half. It would require further classification of the ridgelines to distinguish the primary southeast ridgeline of San Bruno Mountain from the other, secondary ridgelines. While there is a geometric formula to calculate the height at which a building would break the ridgeline, its effectiveness would be dependent upon the accuracy of the data provided and the point(s) chosen to represent the public viewing location. This alternative would not preserve public views of the Mountain per se. If the Commission is concerned, though, that the language proposed by staff for Section 17.12.040.L.2 is not clear enough to prevent development that would break a significant ridgeline, it could be revised to read:

In addition to the findings required for issuance of design permits set forth in Section 17.42.040, the Planning Commission shall find that the building’s placement, height, bulk and landscaping will

(a.) not substantially disrupt the natural silhouette of San Bruno Mountain’s southeast ridgeline and

(b.) preserve 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.

Yet another alternative would take a defined approach to minimizing impacts by adopting development regulations to set site-specific height limits, consistent with General Plan Policies 5, 6 & 22 (attached). For example, the 35 ft. standard height limit in the R-BA District could be set for ridgeline properties as measured from the lowest elevation of the property, or a “not to exceed” restriction could be added to the height limit relative to the elevation(s) of the ridgeline through the property (see attached chart of Brisbane Acres properties subject to the current ridgeline provisions). Reducing the setbacks as proposed in Section 17.12.040.D would accommodate this by making it easier to shift the building footprint closer to the lowest portion of the site. Any proposal in compliance would not be subject to design review (other than as may be necessary through the HCP and CEQA processes); a proposal not in compliance would require Variance approval through the Planning Commission.

Although this less subjective approach might be easier to administer, its results could not be guaranteed to preserve public views of San Bruno Mountain park or the Mountain skyline. As

with the first alternative, its effectiveness would also be dependent upon the accuracy of the elevation data provided by the applicant.

Nonconforming Ridgeline Structures. As for existing structures located on properties through which a ridgeline runs, the R-BA District regulations should clarify those instances in which design review would be required. In the Nonconforming Uses and Structures Chapter of the Municipal Code, BMC Section 17.38.080.A prohibits a nonconforming structure from being "...altered, enlarged or expanded so as to increase the degree of noncompliance or otherwise increase the discrepancy between existing conditions and the requirements..." of the Zoning Ordinance. BMC Section 17.38.090.A allows that a nonconforming residential structure damaged by natural calamity to the extent that less than 75% of its floor area need be repaired or replaced may be reconstructed to its original size and configuration, as long as all of the new construction complies with applicable building, health and fire codes. If damaged by 75% or more of its floor area, the nonconforming structure may be restored to its original floor area, number of units, setbacks and parking, without otherwise having to comply with the zoning regulations, as long as all of the new construction complies with applicable building, health and fire codes. Based upon these existing provisions, staff suggests the following:

3. *An existing structure may be repaired or replaced in accordance with Section 17.38.090 without design permit approval, but any alteration or expansion which raises any portion of the roofline or increases the building's lot coverage shall be subject to design permit approval under this section.*

Attachments:

Draft Resolution RZ-3-11a
Redline Version of Preliminary Draft Revisions to BMC Chapter 17.12
Draft Figure 17.02.695 with Ridgelines Identified per Topographic Map of R-BA District
Chart of Brisbane Acres Properties Subject to Ridgeline Provisions
Open Space Plan Figure 4
Topographic Map of R-BA District with Ridgelines from Figure 4
Comparison of Ridgelines from Figure 4 and Draft Figure 17.02.695, Annotated to Highlight Private Ridgeline Properties
San Bruno Mountain State and County Park
Map of Potential Public Viewing Locations
Photographs Comparing Views from 5 Ft. Above the Ground Vs. 5 Ft. Story Pole Examples
General Plan Policies & Programs: Ridgeline Protection/Property Rights

draft
RESOLUTION NO. RZ-3-11a

RESOLUTION OF INTENTION TO CONSIDER AMENDMENTS TO
THE CITY OF BRISBANE MUNICIPAL CODE TITLE 17, ZONING,
REGARDING THE R-BA BRISBANE ACRES RESIDENTIAL DISTRICT

WHEREAS, on January 18, 2011, the City Council adopted the 2007-2014 Housing Element; and

WHEREAS, the Planning Commission has determined that amending Municipal Code Chapter 17.12 to clarify the density transfer provisions and add clustered development provisions would be consistent with Housing Element Programs H.H.2.b, H.H.2.c and H.H.2.d, as well as General Plan Policy 81 and Programs 31b & 83b; and

WHEREAS, the Planning Commission has determined that amending the height regulations and ridgeline provisions in Municipal Code Chapter 17.12 would be consistent with General Plan Policy 6 and Program 22a that require that the City to "Set clear and definitive standards for all rules and regulations;" and "Consider amendments to the Zoning Ordinance which contain clear and defined standards to protect creativity and diversity in design while addressing issues of height, scale, mass and articulation;" and

WHEREAS, the Planning Commission also finds that amending the zoning map to correct the split zoning of a property would be consistent with General Plan Policy 6.

NOW, THEREFORE, BE IT RESOLVED, that the City of Brisbane Planning Commission intends to consider amendments to the Title 17, Zoning, of the Brisbane Municipal Code.

JAMEEL MUNIR
Chairman

I hereby certify that the foregoing Resolution No. RZ-3-11a was duly and regularly passed and adopted by the Brisbane Planning Commission at a regular meeting thereof held on May 12, 2011, by the following roll call vote:

AYES:
NOES:
ABSENT:

JOHN SWIECKI
Community Development Director