

City of Brisbane

Planning Commission Agenda Report

TO: Planning Commission For the Meeting of 5/23/2019

SUBJECT: **Variance V-1-19/Grading Review EX-1-19; 296 San Benito Road;** R-1 District; Variance and Grading Review to allow demolition of an existing single-family home and construction of a new 1,794.5 sq ft single-family home on a 2,300 sq ft lot, exceeding the maximum permitted FAR by 138.5 sq ft and requiring 95 cubic yards of soil cut and export; Jerry Kuhel, Kuhel Design, applicant; Paul M. and Glenda M. Jimenez, owner.

SUPPLEMENTAL REPORT

BACKGROUND: This application was continued from the meeting of April 25, 2019 to allow the Commission additional time to consider the merits of the application. The April 25 staff report is attached for reference.

During the public hearing, the public and Commission both posed questions regarding findings adopted for previously approved FAR variances and the incidence of two-car garages on substandard lots in the vicinity, which are discussed further below.

Effective Date of FAR Maximums in the R-1 District

At the April 25 meeting, testimony was provided referencing the development at 276 San Benito Road, which features a FAR of approximately 0.93 on a substandard lot and provides a two-car garage. In researching this matter further, staff has determined that development of 276 San Benito Road, which received its building permit approval in 2000, was not subject to an FAR maximum. Until adoption of Ordinance 463 in September 2002, there were no FAR maximums in the R-1 District. This means that prior to adoption of the FAR maximum, the bulk and mass of a home was controlled by the height, setback, and lot coverage standards, which the development at 276 San Benito Road complied with at the time of the building permit issuance

Relevant to the Commission's discussion of the provenance of the 200 sq ft exemption for covered parking on lots less than 3,700 sq ft in size, Ordinance 463 also contained an exemption of up to 400 sq ft for covered parking on lots less than 3,700 sq ft in size. This exemption was reduced to 200 sq ft in 2004 via adoption of Ordinance 485, and remains the current exemption in the ordinance today.

Prior FAR Variances

Since FAR maximums were adopted in residential districts in September 2002 (Ordinance 463), the Planning Commission has considered three Variance requests to permit homes to exceed the FAR maximum of 0.72. These requests and the Commission's actions on them are summarized in the table below.

Date	Project Address	Variance Request	Commission Action	Findings
1/9/03	180 Santa Clara St.	FAR Variance to allow new home to have a 0.96 FAR	Denied	No conditions to assure the request would not constitute a grant of special privilege; no special circumstances that prevent an appropriate sized home on lot
2/8/07	669 Sierra Point Rd.	FAR Variance to allow additions to existing home with nonconforming FAR to correct structural deficiencies	Approved (expired; building permit not issued)	Special circumstances in that the design of additions allowed for repair of structurally deficient existing structure; project conditioned to repair deficient private sewer line
6/12/08	240 Tulare St.	FAR Variance to allow new duplex to have a 0.92 FAR	Denied	No conditions to assure the request would not constitute a grant of special privilege; no special circumstances that prevented an appropriate sized structure on lot

It should be noted that the Variance granted in 2001 to allow development of 230 Humboldt Road referenced by the applicant and in written correspondence at the Commission’s April 25 meeting was a Variance request to allow development of a substandard lot that was owned in common with another substandard lot. As stated, there were no FAR maximums in the residential districts until adoption of Ordinance 463 in September 2002, so the development’s FAR complied with the regulations in effect at the time. The findings for approving a Variance relate specifically to privileges enjoyed by properties in the vicinity within the same zoning classification. Staff does not believe that historic development that was constructed in compliance in the zoning regulations in effect at the time of construction is enjoying a privilege that is being denied the current applicant and therefore this finding is not met on the basis of this comparison.

Two-Car Garages on Substandard Lots on 200 Block of San Benito

Of the 11 substandard lots with garages on the 200-block of San Benito Road (odd and even; please note prior FAR analyses included only the even side of the block), the majority are one-car garages, while four have two-car garages. Of the four substandard lots with two-car garages, all comply with the FAR maximum with the exception of 276 San Benito Road, which as addressed previously was constructed prior to the adoption of the FAR maximums.

Variance Findings

As staff previously indicated, there are no definitions in the zoning ordinance for the terms “privilege” and “special circumstances” relative to the Variance findings. These terms have been interpreted by the Commission on a case-by-case basis as appropriate to the project and site in question and nature of the Variance request. The Commission may refer to the attached handout

from the Governor's Office of Planning and Research describing the Variance approval process for general information.

Written Correspondence

Written correspondence received prior to publication of this agenda report is attached for the Commission's reference.

Next Steps

Should the Commission wish to approve the requested FAR variance, the Commission will have to make affirmative findings per BMC Section 17.46.010 as summarized below:

- The strict application of the FAR maximum is found to deprive the subject property of privileges enjoyed by other properties in the vicinity and under identical zone classification because of special circumstances applicable to subject property, such as size, shape, topography, location or surroundings; and
- The variance will be subject to conditions to assure that the FAR variance does not constitute a grant of special privilege inconsistent with the limitations upon other properties in the vicinity and district in which the subject property is located.

At the April 25, 2019 Planning Commission meeting, comments from Commissioners and the public addressed the property's location adjacent to Brisbane Elementary School which impacts the supply of street parking, as well as the property's substandard size. Should the Commission find that special circumstances and deprivation of privileges do exist, additional discussion regarding conditions to ensure the FAR variance does not constitute a grant of special privilege would have to be discussed and defined by the Commission.

RECOMMENDATION: Deny Variance V-1-19 via adoption of Resolution V-1-19, containing the findings of denial, and approve Grading Review EX-1-19 via adoption of Resolution EX-1-19, containing the findings and conditions of approval.

ATTACHMENTS:

- A. April 25, 2019 Planning Commission staff report
- B. Draft Resolution V-1-19 with recommended findings of denial
- C. Draft Resolution EX-1-19 with recommended findings and Conditions of Approval
- D. Written communications
- E. OPR Handout: The Variance (excerpts)



Julia Ayres, Associate Planner



John Swiecki, Community Development Director

PAGE LEFT INTENTIONALLY
BLANK

City of Brisbane Planning Commission Agenda Report

V-1-19/EX-1-19
April 25, 2019 Meeting
Page 2

permits proposing more than 50 cubic yards of soil export from a site is mandated under BMC §17.32.220.

ANALYSIS AND FINDINGS:

Project Description

The subject 2,300 sq ft property is substandard in regards to lot size, width, and depth. The property is currently developed with an approximately 1,000 sq ft home, to be demolished, and provides only one uncovered off-street parking space in a parking pad accessed by an approximately 12 ft curb cut on Glen Park Way.

The proposed project would replace the existing home with a three-story, 1,794.5 sq ft home and create a new 18 ft curb cut on San Benito Road. The home would feature 1,521 sq ft of living area and 473 of garage area, exceeding the minimum dimensions for a two-car garage established per BMC §17.34.040. With two compact sized parking spaces provided within the driveway, a total of four parking spaces would be accommodated on-site. It should be noted that per BMC §17.06.040.F, up to 200 sq ft of garage floor area may be subtracted from the total floor area calculation for lots less than 3,700 sq ft in size. This 200 sq ft reduction is reflected in the project's reported (net) floor area total of 1,794.5 sq ft.

Variance Analysis

As noted above the applicant is requesting a Variance to allow the new home to exceed the maximum floor area for the property by 138.5 sq ft. In order to grant the requested variance, the Planning Commission must find that, because of special circumstances applicable to the property, such as its size, shape, topography, location, or surroundings, the strict application of the zoning ordinance would deprive the property of privileges enjoyed by other properties in the vicinity and same zoning district. Approval of a variance must also be subject to such conditions as necessary to ensure that the variance will not constitute a grant of special privilege inconsistent with the limitations upon other properties in the vicinity and same zoning district.

Based on the staff analysis below, the application **would not meet** these findings. (BMC §17.46.010)

- Special Circumstances Applicable to Subject Property:

As previously noted, the subject property is substandard in regards to lot size, width, and depth (see applicant's Site Plan in Attachment E). The majority of lots in the vicinity are less than 5,000 sq ft in size, and the subject property is one of four lots in the vicinity less than 2,500 sq ft in size. (See Attachment E). Thus, while the lot is substandard in size, many lots in the vicinity are similarly sized or less conforming. As such, there are no special circumstances applicable to the subject property as compared to other properties in the vicinity.

- Privileges Enjoyed by Others in the Vicinity Deprived to Subject Property:

TO: Planning Commission

For the Meeting of 4/25/2019

SUBJECT: Variance V-1-19/Grading Review EX-1-19; 296 San Benito Road; R-1 District; Variance and Grading Review to allow demolition of an existing single-family home and construction of a new 1,794.5 sq ft single-family home on a 2,300 sq ft lot, exceeding the maximum permitted FAR by 138.5 sq ft and requiring 95 cubic yards of soil cut and export; Jerry Kuhel, Kuhel Design, applicant; Paul M. and Glenda M. Jimenez, owner.

REQUEST: The applicant proposes construction of a 1,794.5 sq ft home on a 2,300 sq ft lot at 296 San Benito Road. The floor plans call for a two-car garage and bedroom at the lower level and two levels of living space above. Two covered parking spaces would be provided in the garage and two compact uncovered spaces would be accommodated in a new driveway accessed from San Benito Road. The applicant's conceptual grading plan calls for 95 cubic yards (cy) of soil to be excavated and exported from the site.

G.1.5

In order to move forward with the project as designed, the applicant requests approval of the following:

- A Variance to allow the new home to exceed the maximum floor area by approximately 138.5 sq ft; and
- A Grading Permit to allow 95 cubic yards (cy) of soil export from the site.

The City Engineer has determined that the submitted grading plans are satisfactory for the Planning Commission's Grading Permit review.

RECOMMENDATION: Deny Variance V-1-19 via adoption of Resolution V-1-19, containing the findings of denial, and approve Grading Review EX-1-19 via adoption of Resolution EX-1-19, containing the findings and conditions of approval.

ENVIRONMENTAL DETERMINATION: Constructions of new single-family homes is categorically exempt from the provisions of the California Environmental Quality Act per Section 15303(a) of the CEQA Guidelines. The exceptions to this categorical exemption referenced in Section 15300.2 do not apply.

APPLICABLE CODE SECTIONS: The development regulations of the R-1 District, including floor area (FAR) maximums, are contained in BMC Chapter 17.06. Variance findings for approval are described in BMC Chapter 17.46. Planning Commission review of grading

In the R-1 zoning district, the maximum FAR of 0.72 is sufficient to allow most standard lots (2,500 sq ft or more) to accommodate 1,800 sq ft of living area and one covered parking space. A one-car garage is 200 sq ft, per the design standards in BMC §17.34.040.G.1, correlating with the 200 sq ft reduction in floor area allowed by BMC §17.06.040.F for standard-sized properties. For the proposed home size of 1,521 sq ft (and any home under 1,800 sq ft of living area), BMC §17.34.020 requires only one covered parking space and two uncovered parking spaces. In this particular case, the applicant is requesting an FAR Variance to accommodate an additional covered parking space beyond the one space required by the parking ordinance. The project plans call for a 473 sq ft garage, which exceeds the minimum dimensions and area for a two-car garage by 73 sq ft and exceeds the covered parking requirement by 273 sq ft.

By uniformly applying the 200 sq ft FAR reduction for covered parking for standard lots, the R-1 regulations recognize that standard lots are disproportionately impacted by the covered parking requirements than standard lots. The 200 sq ft exemption allows more floor area to be dedicated to living area for people rather than parking areas for cars. The ability to provide a two-car garage where it is not required by the parking ordinance while otherwise maximizing living space is thus not a privilege enjoyed by other standard lots in the R-1 district.

- Approval would be subject to conditions to ensure that the variance will not constitute a grant of special privilege:

As staff is unable to make the required findings to support the requested variance, this finding is not applicable.

Grading Review

While staff is recommending denial of the requested FAR variance and redesign of the project to comply with the R-1 district standards, staff does recommend approval of the requested Grading Review as development of a new conforming home would still require site excavation.

In 2003, the Planning Commission adopted guidelines for reviewing grading permit applications that contain findings for permit approval. The application **would meet** these findings.

- The proposed grading is minimized and designed to reflect or fit comfortably with the natural topography (General Plan Policies 43, 245 & 312 and Program 18a).

The subject property features an approximately 10% slope from the front to rear property line. As indicated by the applicant's conceptual grading plan and sections, 95 CY of soil excavation and export from the site is the minimum necessary to accommodate the new structure within the surrounding natural topography and provide required on-site parking. The City Engineer has reviewed and accepted the applicant's proposed driveway location on San Benito Road, with the condition that the curb cut on Glen Park Way be eliminated and restored as a curb and sidewalk.

- The proposed grading is designed to avoid large exposed retaining walls (General Plan Policies 43 & 245).

The proposed grading would not result in any exposed retaining walls. An 18-inch landscape wall is proposed in the rear yard which does not require a building permit.

- The proposed grading is designed to conserve existing street trees (as defined by BMC Section 12.12.020), any California Bay, Laurel, Coast Live Oak or California Buckeye trees, and three or more trees of any other species having a circumference of at least 30 inches measured 24 inches above natural grade.

The project plans do not call for removal of any trees on or off-site.


- The proposed grading complies with the terms of the San Bruno Mountain Area Habitat Conservation Plan Agreement and Section 10(a) Permit, if and as applicable (General Plan Policy 119 and Program 83b).

This finding does not apply as the subject property is not located within the boundaries of the San Bruno Mountain Area Habitat Conservation Plan.

ATTACHMENTS:

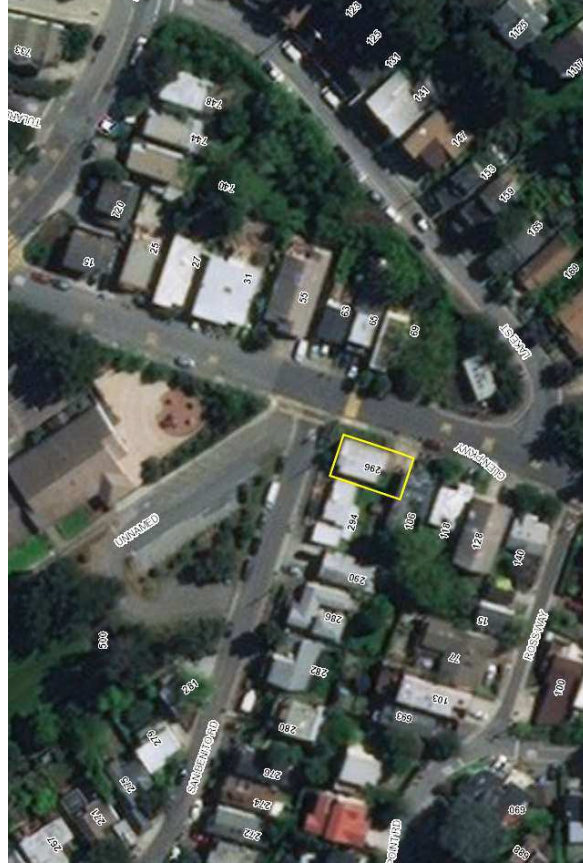
- ~~Draft Resolution V-1-19 with recommended findings of denial~~
- ~~Draft Resolution EX-1-19 with recommended findings and Conditions of Approval~~
- Vicinity map
- Project data table
- Staff's FAR Variance analysis
- Applicant's supporting statements and plans


Julie Ayres, Associate Planner


John Swiecki, Community Development Director

Attachment C

Aerial Vicinity Map
296 San Benito Rd.



G.1.7

G.1.17

BLANK

G.1.18

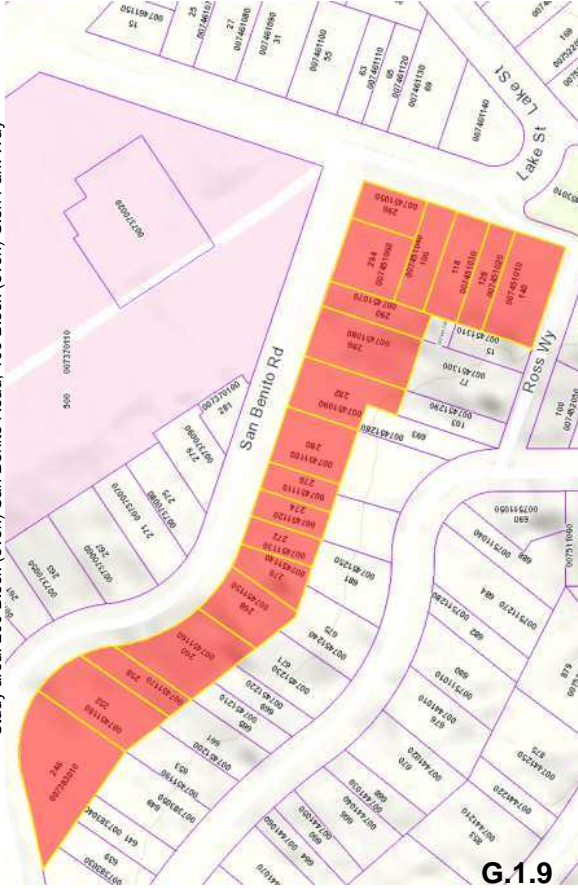
Project Data Table

ADDRESS	296 San Benito Road				
APN	007451050				
ZONING	R-1 Residential				
DESCRIPTION	Variance V-1-19 and Grading Review EX-1-19 to allow construction of new SFD that exceeds the 0.72 FAR with 95 CY of soil cut & export				
Development Standard	Existing	Proposed	Min/Max	Complies	Does not comply
Lot Area	2300 SF		5,000 SF	CoC	
Lot Coverage	1,079 SF or 47%	914 SF or 40%	40% or 920 SF	X	
Floor Area	1,008 SF or 0.44 FAR	1,794.5 SF or 0.78 FAR	0.72 FAR or 1,656 SF		X Variance
Setbacks					
W Side	3'	5'	3.65'	X	
E Side	6' 6"	5'	3.65'	X	
Rear	8' 10"	12' 6"	10'	X	
Front	8'	16'	9' (block avg)	X	
Decks		FLL: 12' 2" SLL: 5'	FLL: 9' SLL: 5'	X	
Stairs		FLL: 2' 5" SLL: 5'	FLL: 0' SLL: 5'	X	
Eaves		SLL: 3' 6"	SLL: 2' 6"	X	
Height	<28'	27' 10"	28'	X	
15' from FLL	<20'	n/a	20'	n/a	
Parking	1 uncovered	2 covered; 2 in d/w	3 (1 covered)	X	
Articulation					
Front	n/a	less than 20' x 20'	n/a	n/a	
Rear	n/a	less than 20' x 20'	n/a	n/a	
Landscaping		150 SF	15% of FYSB or 49 SF	X	
Other Standards	YES	NO	STATUS	95 CY cut/export	
Grading?	X				

BLANK

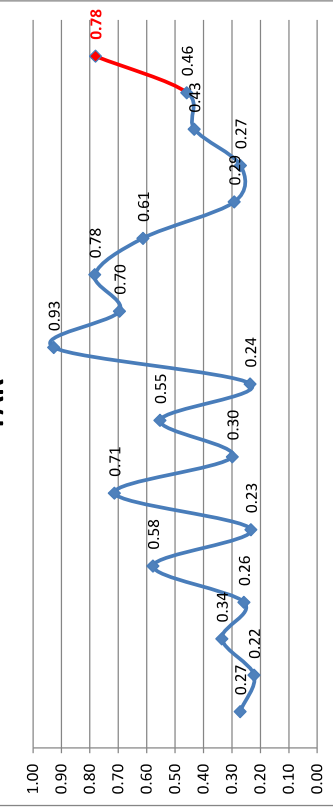
Floor Area Ratio Variance Analysis

Study area: 200 Block (even) San Benito Road; 100 Block (even) Glen Park Way



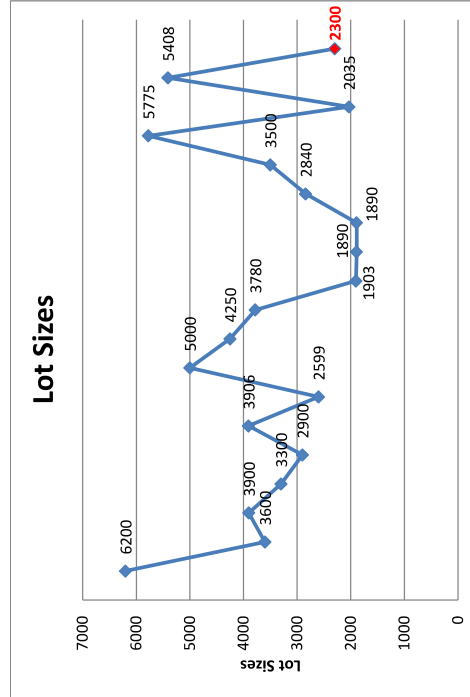
G.1.9

FAR



Red value indicates subject proposal.

Data sources: City of Brisbane building permit records, San Mateo County Assessor records. Reported data represents best estimates based on available data.



Most lots < 5,000 SF. Red value indicates subject proposal.

To: Brisbane Planning Department
Date: 1-16-19
From: Jerry Kuhel
Re: 296 San Benito Ave. variance application

Project Description: Replace existing 1079 sq. ft. 1 story, three bedroom, 1 bath single family residence with no covered parking and 46% lot coverage with new 1796 sq. ft. 3 story, 2 bedroom, 3 bath, 1 office single family residence with 2 covered parking space and 40% lot coverage on a substandard size 2300 sq. ft. lot.

We are asking for a variance for an additional 140 sq. ft. over the allotted .72% F.A.R. to accommodate an additional covered parking space in the garage.

Arguments for the variance:

1. This is a substandard size lot. The additional square footage requested would conform to the required F.A.R. of a standard 2500 sq. ft. lot.
2. There are other nearby homes on the San Benito with larger floor areas. 282 San Benito – FAR 1950 276 San Benito – FAR 2480. Though their lot sizes are larger, this would not be considered a large house on the block.
3. The additional 140 sq. ft. does not expand structure or increase the footprint, it merely uses space that would otherwise be unused crawlspace.
4. The additional garage space would have a positive impact on the neighborhood by providing additional on street parking.

G.1.10

BLANK

RECEIVED

JAN 17 2019

Comm. Dev. Dept. Brisbane

PROJECT DATA

THE CLIENT IS: JIMENEZ RESIDENCE
 296 SAN BENITO ROAD
 BRISBANE, CALIFORNIA
 415-850-1730
 10/15/2018

PROJECT DESCRIPTION

REVISIONS TO EXISTING FLOOR PLANS

DRAWING INDEX

A1 EXISTING FLOOR PLANS
 A2 NEW FLOOR PLANS
 A3 NEW FLOOR PLANS
 A4 EXISTING FLOOR PLANS
 A5 EXISTING FLOOR PLANS
 A6 FLOOR AREA CALCULATIONS

APPLICABLE CODES:

2018 CALIFORNIA BUILDING CODE
 2018 CALIFORNIA FIRE CODE
 2018 CALIFORNIA MECHANICAL CODE
 2018 CALIFORNIA ELECTRICAL CODE
 2018 CALIFORNIA PLUMBING CODE
 2018 CALIFORNIA GAS CODE
 2018 CALIFORNIA ENERGY CODE

GENERAL NOTES:

1. ALL WORK SHALL BE IN ACCORDANCE WITH THE CALIFORNIA BUILDING CODE, FIRE CODE, MECHANICAL CODE, ELECTRICAL CODE, PLUMBING CODE, GAS CODE, AND ENERGY CODE.
2. THESE PLANS ARE FOR THE GENERAL CONTRACTOR'S USE ONLY. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL AGENCIES.
3. THE CONTRACTOR SHALL BE RESPONSIBLE FOR VERIFYING THE EXISTING CONDITIONS AND FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL AGENCIES.
4. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL AGENCIES.
5. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL AGENCIES.
6. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL AGENCIES.
7. REMOVE UP TO 10% OF THE EXISTING FLOOR AREA.

JIMENEZ RESIDENCE
 296 SAN BENITO ROAD
 BRISBANE, CALIFORNIA

PROJECT NO. 18-001

DATE: 10/15/2018

SCALE: 1/8" = 1'-0"

SHEET: A1

OF: 10

G.1.2

PROJECT DATA

THE CLIENT IS: JIMENEZ RESIDENCE
 296 SAN BENITO ROAD
 BRISBANE, CALIFORNIA
 415-850-1730
 10/15/2018

PROJECT DESCRIPTION

REVISIONS TO EXISTING FLOOR PLANS

DRAWING INDEX

A1 EXISTING FLOOR PLANS
 A2 NEW FLOOR PLANS
 A3 NEW FLOOR PLANS
 A4 EXISTING FLOOR PLANS
 A5 EXISTING FLOOR PLANS
 A6 FLOOR AREA CALCULATIONS

APPLICABLE CODES:

2018 CALIFORNIA BUILDING CODE
 2018 CALIFORNIA FIRE CODE
 2018 CALIFORNIA MECHANICAL CODE
 2018 CALIFORNIA ELECTRICAL CODE
 2018 CALIFORNIA PLUMBING CODE
 2018 CALIFORNIA GAS CODE
 2018 CALIFORNIA ENERGY CODE

GENERAL NOTES:

1. ALL WORK SHALL BE IN ACCORDANCE WITH THE CALIFORNIA BUILDING CODE, FIRE CODE, MECHANICAL CODE, ELECTRICAL CODE, PLUMBING CODE, GAS CODE, AND ENERGY CODE.
2. THESE PLANS ARE FOR THE GENERAL CONTRACTOR'S USE ONLY. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL AGENCIES.
3. THE CONTRACTOR SHALL BE RESPONSIBLE FOR VERIFYING THE EXISTING CONDITIONS AND FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL AGENCIES.
4. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL AGENCIES.
5. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL AGENCIES.
6. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL AGENCIES.
7. REMOVE UP TO 10% OF THE EXISTING FLOOR AREA.

JIMENEZ RESIDENCE
 296 SAN BENITO ROAD
 BRISBANE, CALIFORNIA

PROJECT NO. 18-001

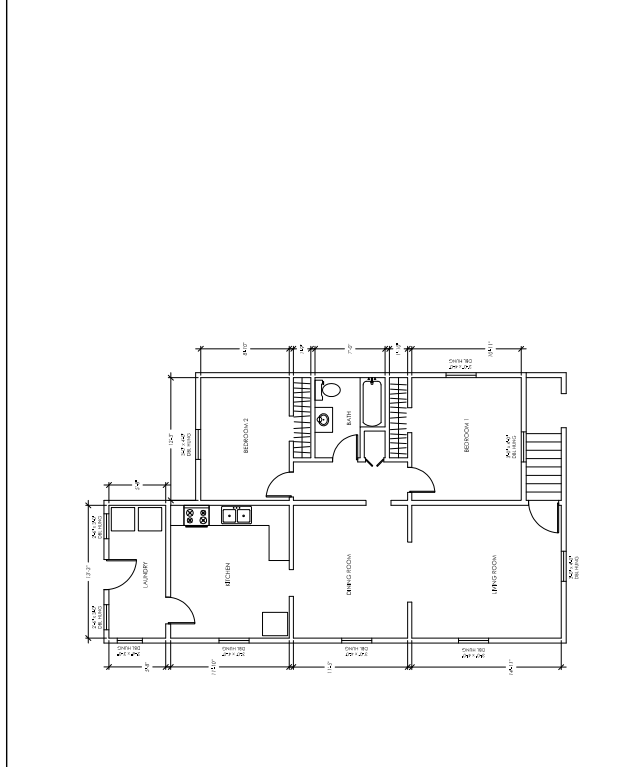
DATE: 10/15/2018

SCALE: 1/8" = 1'-0"

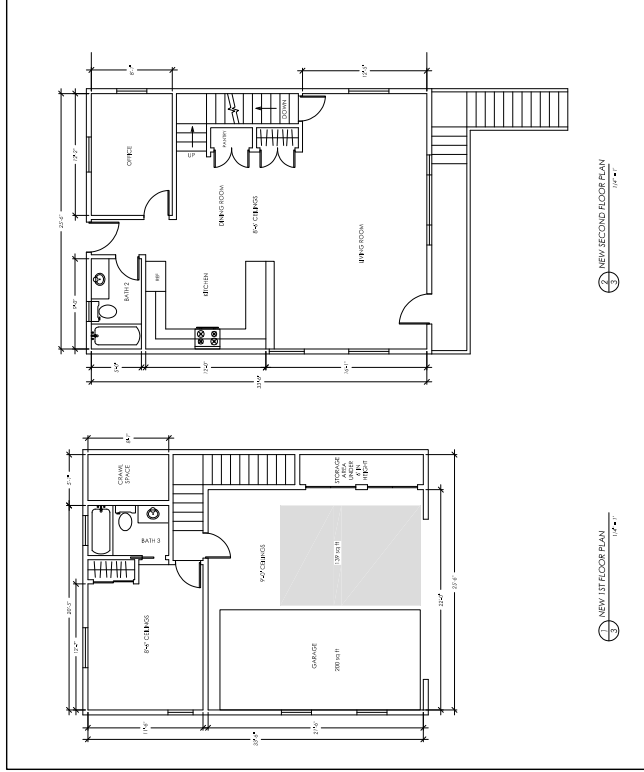
SHEET: A1

OF: 10

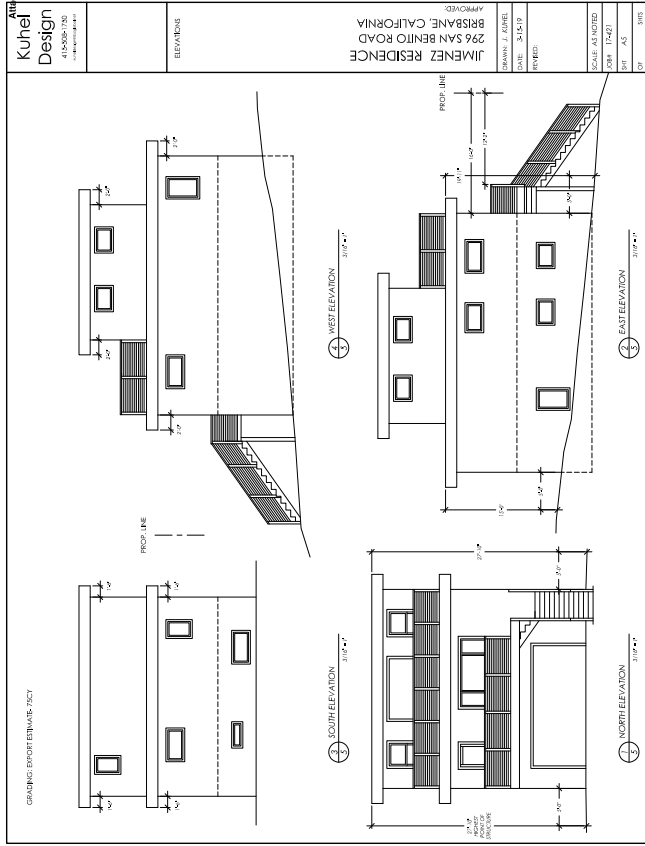
G.1.1



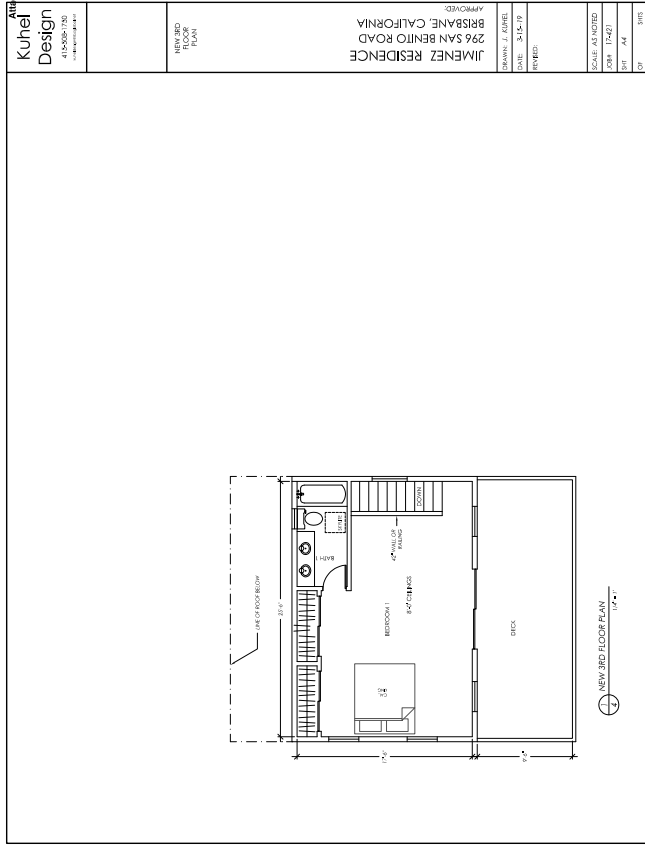
G.1.13



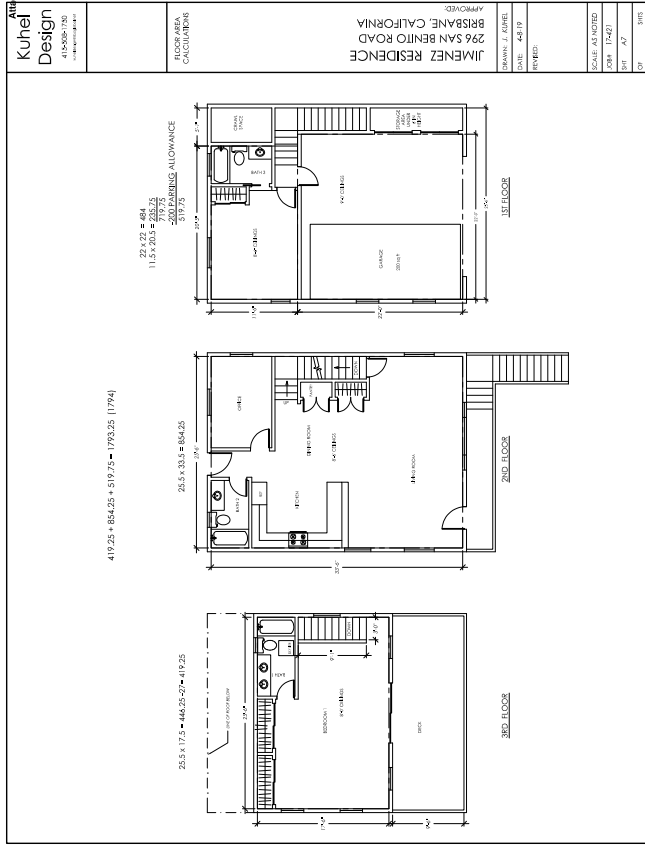
G.1.14



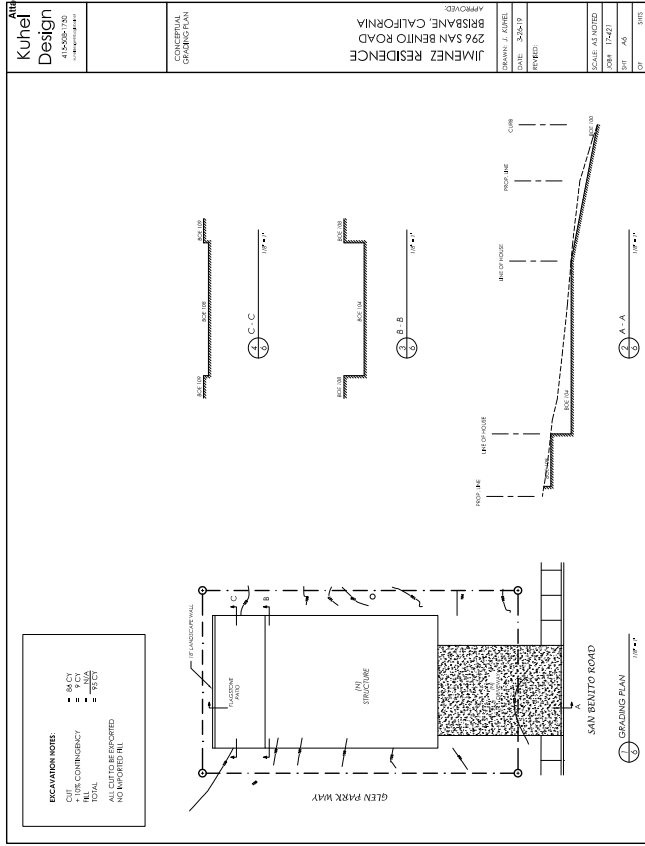
G.1.13



G.1.13



G.1.13



G.1.17

Draft
RESOLUTION V-1-19

A RESOLUTION OF THE PLANNING COMMISSION OF BRISBANE
DENYING VARIANCE V-1-19
FOR A NEW SINGLE-FAMILY HOME
AT 296 SAN BENITO ROAD

WHEREAS, Jerry Kuhel, of Kuhel Design, applied to the City of Brisbane for a Variance to allow construction of a single-family dwelling at 296 San Benito Road that would exceed the maximum floor area permitted by the R-1 Residential District standards by approximately 138.5 square feet, such application being identified as Variance V-1-19; and

WHEREAS, first on April 25, 2019 and subsequently continued to May 23, 2019, the Planning Commission conducted a hearing of the application, publicly noticed in compliance with Brisbane Municipal Code Chapters 1.12 and 17.54, 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 memorandums relating to said application, and the written and oral evidence presented to the Planning Commission in support of and in opposition to the application;

NOW THEREFORE, based upon the findings set forth in Exhibit A attached herein, the Planning Commission of the City of Brisbane, at its meeting of May 23, 2019 did resolve as follows:

Variance application V-1-19 is denied per the findings of denial attached herein as Exhibit A.

ADOPTED this 23rd day of May, 2019, by the following vote:

AYES:
NOES:
ABSENT:

PAMALA SAYASANE
Chairperson

ATTEST:

JOHN A. SWIECKI, Community Development Director

DRAFT
EXHIBIT A

Action Taken: Deny Variance V-1-19, per the staff memorandum with attachments, via adoption of Resolution V-1-19.

Findings of Denial:

Variance V-1-19

A. There are no conditions that will assure that the adjustment requested would not constitute a grant of special privilege inconsistent with the limitations upon other properties in the vicinity and district in which the subject property is located. Specifically, the FAR variance request would result in an FAR for the property of 0.78, which would not only exceed the maximum 0.72 FAR of the R-1 district but would also be the second-highest FAR in the vicinity of the subject property, as demonstrated in Attachment E to the staff report. There are no conditions that could be applied to ensure that granting of the requested FAR variance would not be a grant of special privilege to the applicant not otherwise enjoyed by substandard sized lots in the R-1 district.

B. There are no special circumstances applicable to subject property, including size, shape, topography, location or surroundings, for which the strict application of this title would deprive the subject property of privileges enjoyed by other properties in the vicinity and under identical zone classification. Specifically, the majority of lots in the vicinity are less than 5,000 sq ft in size, and the subject property is one of four lots in the vicinity less than 2,500 sq ft in size as shown in Attachment E to the staff report. None of these lots, with the exception of one, exceed the maximum FAR. Additionally, by uniformly applying the 200 sq ft FAR reduction for covered parking for substandard lots, the R-1 regulations recognize that substandard lots are more disproportionately impacted by the covered parking requirements than standard lots. The ability to provide a two-car garage where it is not otherwise required by the parking ordinance is thus not a privilege enjoyed by other substandard lots in the R-1 district.

Draft
RESOLUTION EX-1-19

A RESOLUTION OF THE PLANNING COMMISSION OF BRISBANE
RECOMMENDING APPROVAL OF GRADING PERMIT EX-1-19
FOR A NEW SINGLE-FAMILY HOME
AT 296 SAN BENITO ROAD

WHEREAS, Jerry Kuhel, of Kuhel Design, applied to the City of Brisbane for Grading Permit review for construction of a single-family dwelling at 296 San Benito Road that will require 95 cubic yards of soil cut and export from the site, such application being identified as Grading Review EX-1-19; and

WHEREAS, first on April 25, 2019 and subsequently continued to May 23, 2019, the Planning Commission conducted a hearing of the application, publicly noticed in compliance with Brisbane Municipal Code Chapters 1.12 and 17.54, 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, and 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; pursuant to Section 15303(a) of the State CEQA Guidelines; and

WHEREAS, the Planning Commission of the City of Brisbane hereby makes the findings attached herein, as Exhibit A, in connection with the requested Grading Permit review;

NOW THEREFORE, based upon the findings set forth hereinabove, the Planning Commission of the City of Brisbane, at its meeting of May 23, 2019 did resolve as follows:

City Engineer issuance of Grading Review EX-1-19 is recommended by the Planning Commission in compliance with the conditions of approval attached herein as Exhibit A.

ADOPTED this 23rd day of May, 2019, by the following vote:

AYES:
NOES:
ABSENT:

PAMALA SAYASANE
Chairperson

ATTEST:

JOHN A. SWIECKI, Community Development Director

DRAFT

EXHIBIT A

Action Taken: Recommended City Engineer issuance of Grading Permit EX-1-19, per the staff memorandum with attachments, via adoption of Resolution EX-1-19.

Findings:

Grading Permit EX-1-19

- As indicated by the applicant’s grading plan and sections, the 95 CY of soil excavation and export from the site is the minimum necessary to accommodate the new structure within the surrounding natural topography and provide required on-site parking.
- The proposed grading would result in an exposed retaining wall at the north side of the home, of approximately seven feet in exposed height from grade, adjacent to the mid-level patio and outside of the required five-foot side yard setback.
- Per the submitted project plans, the proposed grading will not result in the removal of existing street trees, any California Bay, Laurel, Coast Live Oak or California Buckeye trees, or three or more trees of any other species having a circumference of at least 30 inches measured 24 inches above natural grade.
- The subject property is not located within the boundaries of the San Bruno Mountain Area Habitat Conservation Plan.

Conditions of Approval:

Prior to Issuance of a Building Permit

- A. Plans submitted for the required building and grading permits shall substantially conform to plans on file in the City of Brisbane Planning Department, with the following modifications:
1. The residential structure shall comply with all development standards of the R-1 zoning district, including but not limited to FAR, lot coverage, and building height maximums, setback minimums, and required on-site parking.
 2. A landscape plan shall be submitted demonstrating compliance with the requirements of Brisbane Municipal Code §17.06.040.I, to the satisfaction of the Planning Director. The plan shall incorporate water-conserving, non-invasive landscaping of sufficient size at maturity to provide screening of the structure in the rear yard and comply with the minimum front yard landscaping requirements of 15%.
 3. The site plan and civil plans shall show elimination of the existing curb cut on Glen Park Way and restoration as a curb and sidewalk per the Department of Public Works’ standard details, subject to review and approval by the City Engineer.
 4. Plans submitted for grading permit review shall be subject to standard review procedures by the Department of Public Works.

- B. Prior to issuance of a building permit, the applicant shall obtain an encroachment permit from the Department of Public Works for all proposed construction activity and private improvements within the public right-of-way.
- C. Prior to issuance of a building permit, the property owner shall enter into standard landscape maintenance agreements with the City.
- D. Prior to issuance of a building permit, an agreement shall be recorded between the owner and the City whereby the owner waives the right to protest the inclusion of the property within an underground utility district.

Other Conditions

- E. All glass shall be nonreflective, and all exterior lighting shall be located so as not to cast glare upward or onto surrounding streets or properties.
- F. Water and sanitary sewer service and storm drainage details shall be subject to approval by the City Engineer.
- G. Drawings depicting all work completed and proposed shall be provided to the satisfaction of the City. Exposure of covered work may also be required to demonstrate compliance with building code requirements.
- H. The permittees agree to indemnify, defend and hold the City and its officers, officials, boards, commissions, employees and volunteers harmless from and against any claim, action or proceeding brought by any third party to attack, set aside modify or annul the approval, permit or other entitlement given to the applicant, or any of the proceedings, acts, or determinations taken, done or made prior to the granting of such approval, permit, or entitlement.
- I. Minor modifications may be approved by the Planning Director in conformance with all requirements of the Municipal Code.

PAGE LEFT INTENTIONALLY
BLANK

RECEIVED

MAY - 7 2019

Comm. Dev. Dept. Brisbane

May 7, 2019

RE: Variance Request from 296 San Benito Road

Dear Honorable Members of the Planning Commission,

I would like to express my concern regarding the variance request from the owners of 296 San Benito Road, and request that you consider and uphold the recommendations set forth by Planning Staff.

I believe that the homeowners and the skilled architectural designer are more than capable to meet the allowed Floor Area Ratio (FAR) for their property set by the City of Brisbane's ordinance. As a substandard lot less than 3,700 sq ft in size, the project is already granted an additional 200 square feet and is reflected and calculated in the project's reported (net) floor area for a total of 1,794.5 sq ft, increasing their floor area significantly. This project will make a huge impact in our neighborhood (going from a small home to a 3-story house), and though I believe that they should be allowed to do so, they should comply with the current framework given by the City.

I also do not feel that they meet the "Special Circumstances Applicable to Subject Property", or are missing "Privileges Enjoyed by Others in the Vicinity Deprived to Subject Property". An enlarged two-car garage with a workspace is not considered special circumstance and falls into the category of having privileged space (like a "pool table or hot tub"). They could easily have a nice sized two-car garage by modifying their workspace or living quarters to meet the City's ordinance, instead of requesting special circumstances.

What precedence are you setting for future requests? This will leave the Commission open to scrutiny for future projects requesting variances. What Colleen Mackin stated is true - It is not about the applicant not being allowed a standard two-car garage while providing the neighborhood with more parking, it is about them getting their garage and asking for more floor space than what is allowed.

A standard two-car garage is 400 sq ft, and the applicant's plans show a 473 sq ft garage. Luc Bouchard states that a 473 sq ft garage is not a big deal, and it is not, but yet the applicant isn't just asking for an additional 73 sq ft over their allotment, they are asking for an additional 138.5 sq ft. And he makes you, the Commissioners, question other variances the applicant could be asking for and to question your good judgement; this is to skew your views. There is additional square footage being requested for privilege, and it's not just for the garage.

There was discussion that it would help the neighborhood by alleviating parking issues, particularly due to its proximity to the elementary school. I feel that is an incorrect statement

as parents do not drop off their kids on the backside of the school very often, and we do not have those issues. If the person who stated this lived on the backside of the school like the applicant and myself, they would know that this proposed project would not help in this fashion. This area is not "a zoo" in regards to parking. We have lots of parking options (completely open on San Benito Rd behind the school). And again, this project is adding a two car garage plus two off street parking spots, so that would already solve the problem IF it existed, and the variance requested would NOT contribute to solving an issue, but rather grants special permission to simply have more floor space.

Most of the letters of support is drummed up by Luc Bouchard's posting on Facebook, and not from actual close-proximity neighbors who will be affected by this project. Though the family is well loved in the community (me not withstanding), that is not a reason to allow someone ask for special privilege. Would the story be different if this were a developer? Would the same consideration be given?

In conclusion, as advised by the Staff, please deny the variance and approve the grading permit. The Planning Commission and the City of Brisbane should uphold the current ordinance set in place. There are no special findings or circumstances given to grant this variance, nor will the additional 138.5 sq ft benefit the neighborhood.

I apologize if I do not write as eloquent as Luc Bouchard, but thank you for hearing my concerns. I have confidence that the owners and designer can work within the framework of the ordinance laid out by the City of Brisbane. I wish them all the best for their project and their new house they will build.

As I am a close neighbor and property owner to the applicant, I wish to remain anonymous in order to keep the peace of the neighborhood. And please keep in mind that it is easier for those in favor of a project to speak out, but harder for those who oppose to come.

Kind regards,
Neighbor to 296 San Benito Road and Owner in this neighborhood

The VARIANCE

WHAT IS A VARIANCE?

Simply put, a variance is a limited exception to the usual requirements of local zoning. As the following discussion will explain, when a city or county is confronted with development on an unusual piece of property, the variance procedure can lend some flexibility to the usual standards of the zoning ordinance. Approval of a variance allows the property owner “to use his property in a manner basically consistent with the established regulations with such minor variations as will place him in parity with other property owners in the same zone” (*Longtin’s California Land Use*, 2nd edition).

ENABLING LEGISLATION

State law specifies the basic rules under which counties and general law cities may consider variance proposals. Charter cities are not subject to these procedures unless they have incorporated them into their municipal ordinance. The following discussion will take a detailed look at the state law relating to variances in counties and general law cities.

The authority to consider variances is as follows:

“Variances from the terms of the zoning ordinances shall be granted only when, because of special circumstances applicable to the property, including size, shape, topography, location or surroundings, the strict application of the zoning ordinance deprives such property of privileges enjoyed by other property in the vicinity and under identical zoning classification.”

“Any variance granted shall be subject to such conditions as will assure that the adjustment thereby authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is situated.”

“A variance shall not be granted for a parcel of property which authorizes a use or activity which is not otherwise expressly authorized by the zone regulation governing the parcel of property. The provisions of this section shall not apply to conditional use permits.” (Section 65906)

Later in this paper, we will take a brief look at three other variance statutes. Section 65906.5 authorizes the grant of a variance from the parking requirements of a zoning ordinance in order to allow parking to occur off-site or for in-lieu fees to be paid. Section 65911

authorizes the granting of variances in open space zones. Section 65852.1 provides that a variance may be approved allowing a second dwelling unit on property zoned for single-family residential use if the occupant is 62 years or older.

PROCEDURE

Approval of a variance is an administrative act. Unlike a rezoning or an amendment to a general plan, consideration of a variance does not involve the establishment of new codes, regulations, or policies, but rather applies the provisions of the zoning ordinance to a particular circumstance. State law provides that the city council or county board of supervisors may delegate responsibility for considering and deciding variance requests. Commonly, responsibility is delegated to a board of zoning adjustment or a zoning administrator.

Public Hearing

Section 65905 requires the city or county to hold a public hearing on proposed variances. Ten-days advance notice of the hearing must be published in a newspaper of general circulation in the community and mailed directly to the applicant and land owner, as well as to owners of properties located within 300 feet of the site boundaries (Section 65091 provides detailed requirements). Nearby property owners must be provided notice even if their property is located outside the jurisdiction’s boundaries (*Scott v. Indian Wells* (1972) 6 Cal.3d 541). The hearing must comply with the open meeting requirements set out in the Ralph M. Brown Open Meeting Act (Section 54950, et seq.).

The notice of hearing must include a description of the proposal and the variance process, the location of the property involved, the identity of the hearing body or administrator, and the date, time, and place of the public hearing (Section 65094). The notice must also specify whether the proposal has been determined to be categorically exempt or if a negative declaration or environmental impact report has been prepared. As much as possible, the hearing notice should be written in plain language and avoid planning jargon.

The purpose of the hearing is for the zoning board or zoning administrator to hear and consider the opinions of the proponent and nearby property owners. At the conclusion of the hearing, the board or administrator will decide whether or not to approve the variance. If the variance is approved, the board or administrator will adopt findings to support their action. Their decision, whether for approval or denial, can be appealed to a higher body (the planning commission, for example) in accordance with the city or county zoning ordinance.

Section 65901 allows the city council or county board of supervisors to specifically authorize its board of zoning adjustment or zoning administrator to decide variance applications without a public hearing. The local zoning ordinance must set out the particular types of variances subject to this rule, as well as the maximum extent of variation from standards which may be allowed. Notwithstanding the cavalier approach of Section 65901, the Office of Planning and Research recommends providing the applicant and neighboring property owners at least the opportunity to request a public hearing on any variance proposal which may affect their property rights. For example, the city may mail notice indicating that no hearing will be held unless specifically requested. This recognizes the due process guarantee of the U.S. Constitution and complies with the holding of the California Supreme Court in *Horn v. County of Ventura* (1979) 24 C.3d 605.

California Environmental Quality Act

Variances are subject to the California Environmental Quality Act (CEQA, Public Resources Code Section 21000, et seq.). Prior to the public hearing on the proposed variance, the city or county must evaluate the proposal to determine whether or not it may have a significant adverse effect on the environment. In most cases, a variance is sufficiently innocuous to be categorically exempt from environmental review (see Section 15305 of the state *CEQA Guidelines*). Where the proposal is not exempt, the city or county must prepare either a negative declaration indicating that the

variance is not exempt, but nonetheless will have no significant effect, or an environmental impact report which describes the expected impacts of the proposal and the means to avoid or lessen those impacts.

Permit Streamlining Act

Variance proceedings are subject to the Permit Streamlining Act (Section 65920, et seq.). Accordingly, a variance proposal for which a negative declaration was adopted or a CEQA exemption used must be acted upon within three months of that action. If an Environmental Impact Report (EIR) was certified for the variance, the application must be acted upon within 6 months of that certification. Further, a variance cannot be disapproved solely to comply with these deadlines.

LIMITATIONS ON THE COMMON VARIANCES

Pursuant to Section 65906, a variance may be granted when:

- (1) there are specific physical circumstances that distinguish the project site from its surroundings; and
- (2) these unique circumstances would create an unnecessary hardship for the applicant if the usual zoning standards were imposed.

Variances are limited to those situations where the peculiar physical characteristics of a site make it difficult to develop under standard regulations. A variance is granted in order to bring the disadvantaged property up to the level of use enjoyed by nearby properties in the same zone. For instance, where the steep rear portion of a residential lot makes the site otherwise undevelopable, a variance might be approved to reduce the front yard setback and thereby create sufficient room for a home on the lot. Similarly, a parcel's shape might preclude construction of a garage unless side yard setback requirements are reduced by approval of a variance.

Review of a proposed variance must be limited solely to the physical circumstances of the property. "The standard of hardship with regard to applications for variances relates to the property, not to the person who owns it" (*California Zoning Practice*, Hagman, et al.). Financial hardship, community benefit, or the worthiness of the project are not considerations in determining whether to approve a variance (*Orinda Association v. Board of Supervisors* (1986) 182 Cal.App.3d 1145). As *California Zoning Practice* suc-

cinctly explains, “[t]he test of bringing property to parity is based on equality of the property rather than equality of the owners.” (emphasis added)

Furthermore, consideration of a variance must focus upon the zoning standard or standards from which an exception is being requested. “[A] variance applicant may not earn immunity from one code provision merely by overcompliance with others. Otherwise, the board charged with reviewing development proposals ‘would then be empowered to decide which code provisions to enforce in any given case; that power does not properly repose in any administrative tribunal’ (*Broadway, Laguna Assn. v. Board of Permit Appeals* (1967) 66 Cal.2d 767).” (*Orinda Association v. Board of Supervisors*, supra).

Variations are only for use in unusual, individual circumstances. There is no basis for granting a variance if the circumstances of the project site cannot be distinguished from those on surrounding lots. For example, all things being equal, in a subdivision where lots are uniformly 40 feet wide, there is no basis for allowing one lot to be developed with reduced side yard setbacks.

Conditions must be imposed on a variance when necessary to avoid granting the applicant a special privilege. As will be discussed later, these conditions must be reasonably related to the development being authorized.

A variance does not change the zoning of the project site, so it cannot permit uses other than those already allowed under existing zoning. Section 65906 prohibits the approval of “use variances.” Nor is a variance intended to be used in place of design review standards. The law does not intend that every or even one-quarter of the properties on a block be granted the same kind of variance. If development within a particular area is commonly leading to requests for consideration of variances, then the city or county should reassess the standards of the applicable zone and, if necessary, change them.

At the same time, the approval or denial of a variance does not create a precedent for subsequent variance requests. Because each variance is based upon special circumstances relating to the site for which it is proposed, the past grant or denial of variances for other properties in the area does not mandate similar action on the part of the hearing body (*Miller v. Board of Supervisors of Santa Barbara County* (1981) 122 Cal.App.3d 539).

The applicant for a variance bears the burden of proving that special circumstances exist to justify its granting (*PMI Mortgage Ins. Co. v. City of Pacific*

Grove (1982) 128 Cal.App.3d 724). The hearing body must not approve a variance unless it can make written findings, supported by substantial evidence in the record, that the variance meets the criteria of Section 65906.

A variance runs with the land. Subsequent owners of the land continue to enjoy the variance. The original land owner cannot transfer the variance to another site, nor can the local agency approve a variance on the condition that it remain owned by a particular person (*Cohn v. County Board of Supervisors* (1955) 135 Cal.App.2d 180).

OTHER TYPES OF VARIANCES

State law also allows variances to required parking regulations, to open space zoning, and for “granny” units. Each of the following statutes has its own findings requirements, some of which differ from those of Section 65906. In all cases, public notice and hearing must be provided pursuant to Section 65905.

Parking variance (Section 65906.5):

“Notwithstanding section 65906, a variance may be granted from the parking requirements of a zoning ordinance in order that some or all of the required parking spaces be located offsite, including locations in other local jurisdictions, or that in-lieu fees or facilities be provided instead of the required parking spaces, if both the following conditions are met:

- (a) The variance will be an incentive to, and a benefit for, the nonresidential development.
- (b) The variance will facilitate access to the nonresidential development by patrons of public transit facilities, particularly guideway facilities.”

Section 65906.5 authorizes variances to the nonresidential (i.e., commercial, industrial, recreational, etc.), on-site parking requirements contained in a local zoning ordinance. Such a variance may authorize locating required parking spaces off site. It may also authorize the landowner to provide in-lieu fees or facilities instead of required parking spaces. It does not authorize reducing the number of required spaces unless in-lieu fees or facilities are provided.

The local agency must adopt findings describing the incentive and benefit being provided to the nonresidential use. These findings must also describe how the variance will facilitate access to the development by riders of public transit.

Open-Space variance (Section 65911):

“Variances from the terms of open-space zoning ordinance shall be granted only when, because of special circumstances applicable to the property, including size, shape, topography, location, or surroundings, the strict application of the zoning ordinance deprives such property of privileges enjoyed by other property in the vicinity and under identical zoning classification.

“Any variance granted shall be subject to such conditions as will assure that the adjustment thereby authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which the property is situated. This section shall be literally and strictly interpreted and enforced so as to protect the interest of the public in the orderly growth and development of cities and counties and in the preservation and conservation of open-space lands.”

This statute is nearly identical to Section 65906 and is subject to basically the same findings requirements. Its purpose is to clarify that variances may be granted to the terms of open-space zoning provided that the provisions of that zoning are not compromised.

“Granny” unit variance (Section 65852.1):

“Notwithstanding section 65906, any city, including a charter city, county, or city and county may issue a zoning variance, special use permit, or conditional use permit for a dwelling unit to be constructed, or which is attached to or detached from, a primary residence on a parcel zoned for a single-family residence, if the dwelling unit is intended for the sole occupancy of one adult or two adult persons who are 62 years of age or over, and the area of floor space of the attached dwelling unit does not exceed 30 percent of the existing living area or the area of the floor space of the detached dwelling unit does not exceed 1200 square feet.”

Section 65852.1 allows a variance to be used like a conditional use permit in order to allow construction of an accessory dwelling for elderly residents. Prior to approval of a variance under Section 65852.1 the city or county must find that the resident or residents meet the age criteria, and that the floor area of the proposed unit does not exceed that allowed by the statute. The findings required for a common variance under Section 65906 do not apply.

In contrast to Section 65906, the granny unit statute applies both to charter and general law cities and specifically authorizes the granting of a “use” variance.

VARIANCE FINDINGS

When approving a variance, the hearing body must make “findings of fact” to support its action (*Topanga Association for a Scenic Community v. County of Los Angeles* (1974) 11 C.3d 506). The agency must also make the findings required by the California Environmental Quality Act (CEQA) and by local ordinance, if any.

Findings are important. They explain the hearing body’s reasons for approving the proposal before it. The purpose for making findings is to “bridge the analytical gap between the raw evidence and ultimate decision” (Topanga, supra). In the event that the decision is challenged, a court will examine the evidence embodied in the findings to determine whether the hearing body abused its discretion when acting on the variance. An abuse of discretion will be found when the agency did not proceed in a manner prescribed by law, when the decision is not supported by findings, and when the findings are not supported by evidence in the administrative record.

Variance findings must describe the special circumstances that physically differentiate the project site from its neighbors. Further, the findings must specify the “unnecessary hardship” that would result from these circumstances in the event that a variance was not approved.

Defensible findings are based on the pertinent evidence that was available to the decisionmakers. Findings should be more than a mere recitation of statutory requirements; they must provide the factual basis that leads to the conclusion drawn by the approving agency.

In the absence of findings, approval of the variance “would [amount] to the kind of ‘special privilege’ explicitly prohibited by Government Code section 65906.” (*Orinda Association v. Board of Supervisors*, supra) For a detailed discussion of findings requirements, see OPR’s publication entitled Bridging the Gap.

CONDITIONS OF APPROVAL

Section 65906 requires that the variance be subjected to those conditions of approval necessary to ensure that it will not be a grant of special privilege. The conditions are meant to maintain parity between the variance site and surrounding properties. For example, if an increase in fence height is requested due to a steeply sloping rear yard, the approved height might be required to be low enough so that neighbors' views would not be obstructed and the increased height would not be noticeable.

The conditions which may be placed on a variance are limited by Section 65909. It requires that dedications of land must be "reasonably related" to the use of the property for which the variance is granted. In addition, a performance bond cannot be required for the installation of public improvements that are not reasonably related to the property use. Limitations on impact fees are described in the Mitigation Fee Act (Section 66000, et seq.).

Generally, the conditions applied to the variance must have an "essential nexus" to some legitimate public need or burden created as a result of the variance approval (*Nollan v. California Coastal Commission* (1987) 97 L.Ed2nd 677). Furthermore, there must be a "rough proportionality" between the extent of the condition and the particular demand or impact of the project. (*Dolan v. City of Tigard* (1994) 129 L.Ed2nd 304). For instance, if a variance is granted allowing a back yard fence to be built two feet higher than usual, there are probably no grounds to impose a condition requiring the landowner to contribute to a road improvement fund. However, it would be proper to regulate the design of the fence. The burden of proof to justify proposed exactions rests with the city or county (*Dolan*, supra)

EXAMPLES

The following court cases illustrate when it may be proper to grant a variance and when it may not be. These cases are illustrations only and should not be used as the sole basis for granting or denying a variance.

Cases Upholding Variance Approvals

Special Circumstances

- Special circumstances supported approval of a variance from off-street parking requirements for

an apartment building when the building was to be located near three public parking garages and many of the tenants would not own cars (*Siller v. Board of Supervisors* (1962) 58 C.2d 479).

- A variance reducing the amount of required off-street parking was justified when the landowner would otherwise have had to partially demolish a building and fill a portion of the bay below high tide line in order to meet the parking standard (*Zakessian v. City of Sausalito* (1972) 28 Cal.App.3d 794).

Distinction of the Site From its Surroundings

- A court upheld issuance of a variance allowing expansion of a hotel without satisfying a requirement that 80% of its accommodations consist of detached cottages (*Miller v. Board of Supervisors of Santa Barbara County* (1981) 122 Cal.App.3d 539). The court held that the hotel in question could be distinguished from the other hotels in its zone because of landscaping and design features that dated from before zoning was enacted.

Cases Overturning Variance Approvals

Special Circumstances

- Subsoil conditions that would increase the cost of building a high-rise and reduce its anticipated income, but which were common to similar high-rise structures, were not "special circumstances" sufficient to support the grant of a variance (*Broadway, Laguna, Etc. Assn. v. Board of Permit Appeals* (1967) 66 C.2d 767). The court reversed the city's approval.
- Where a showing could not be made that special circumstances existed sufficient to distinguish the subject property from its neighbors, the city was not required to issue a variance (*PMI Mortgage Ins. Co. v. City of Pacific Grove* (1981) 128 Cal.App.3d 724).
- Desirable project design, community benefit, and the alleged superiority of the proposed design to development under existing zoning regulations were irrelevant for purposes of judging whether or not to grant a variance (*Orinda Assn. v. Board of Supervisors* (1986) 182 Cal.App.3d 1145). The court held that a building height variance could not be granted, regardless of the alleged benefits of the project, absent a finding detailing the special circumstances that justified its issuance.