# City of Brisbane
## Planning Commission Agenda Report

**TO:** Planning Commission For the Meeting of 10/10/2017

**FROM:** Julia Capasso, Associate Planner, via John Swiecki, Community Development Director

**SUBJECT:** **805 Sierra Point Road; R-1 Residential District; Variance V-1-17;** Variance to allow development of a new single-family home with attached accessory dwelling unit on a 6,621 square-foot vacant, flag-shaped lot, that would exceed the 28 foot height limit by two feet. The tallest segment of the structure would measure 30 feet from grade; Mark Lee, Lee-Jagoe Architecture, Inc., applicant; JL Homeland Development Group LLC, owner; APN 007-522-200.

**REQUEST:** The applicant proposes construction of a new 4,689 sq ft home, including an attached accessory dwelling unit, on a vacant 6,621 sq ft lot at 805 Sierra Point Road. The proposed three-story home would include an attached two-car garage at the lower level with two levels of living space above. Two uncovered parking spaces would be provided in an uncovered parking pad adjacent to the driveway.

The flag-shaped lot has a slope of 7% calculated per BMC §17.02.730, resulting in a 28-foot height limit for the property per the R-1 district regulations. As designed, the tallest segment of the building would measure 30 feet from grade. In order to move forward with the project as designed, the applicant requests approval of a variance to allow the new home to have a maximum height of 30 feet from grade.

**RECOMMENDATION:** Conditionally approve Variance V-1-17, via adoption of Resolution V-1-17 with Exhibit A containing the conditions and findings of approval.

**ENVIRONMENTAL DETERMINATION:** Construction 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:** Lot slope is defined in BMC §17.02.730. The height limit for structures in the R-1 zoning district on lots with less than 20% slope is 28 feet, per BMC §17.06.040. Building height is defined in BMC §17.02.400 and the findings required to grant a Variance to the height limit are contained in BMC §17.46.10.

**ANALYSIS AND FINDINGS:**
Per BMC §17.02.730, the slope of a lot is the ratio, calculated as a percentage, of the vertical distance between the midpoints of the front and rear lot lines to the horizontal distance between

those midpoints. For the subject property, this calculation results in a lot slope of 7% and a maximum building height for the property of 28 feet, per BMC §17.06.040.

As designed, all building segments would be under the 28-foot height limit with the exception of the northeast segment, which would measure 30 feet in height from adjacent natural grade five feet from the building wall due to the property's northerly cross-slope. This segment is shown on the building elevations on sheet A11 of the applicant's plans, annotated by staff and attached to this report. The applicant has provided a diagram identifying the relevant grade elevations taken five feet from the building walls, per the BMC's definition of building height, shown on sheet SP-1.

In order to grant the requested variance to the building height limit, 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. With the project modifications contained in the conditions of approval, the application **would meet** these findings.

- Special Circumstances Applicable to Subject Property:

The subject property is flag-shaped, with an approximately 159-foot front lot line and approximately 47-foot rear lot line, and a northerly cross-slope downward from the property's southeast corner. There is an approximately 20% decrease in elevation from the lot's steepest point at its southeast corner to its lowest point in the northwesterly corner. These circumstances are relevant to the lot slope calculation and applicable height limit to the property. These topographic conditions are not captured by the City's lot slope measurement method, which measures grade changes between the front and rear property lines rather than between side property lines. If the slope was measured from the highest to the lowest points on this particular lot, the 20% elevation loss would qualify for a 30-foot building height maximum.

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

Without approval of the requested variance to the building height limit, the applicant believes the subject property would be deprived of the ability to be developed with a home of similar height as allowed for lots in the surrounding neighborhood. Adjacent properties with more standard lot configurations and topographic conditions at 807 Sierra Point Road (28% slope), 203 Lake Street (26% slope), and 207 Lake Street (21% slope) have sufficient slopes- calculated per the Brisbane Municipal Code- to allow a 30-foot height limit for development. (Note: these lots are all currently developed with two-story homes under the 30-foot height limit).

- Conditions Necessary to Prevent a Grant of Special Privilege:

While the applicant believes that the lot's unique shape and topographic conditions justify applying a 30-foot height limit to the property to allow the project to proceed as designed, staff notes that the project design could be modified to reduce ceiling heights on the second and third floors to lower the height of this segment closer but still not compliant with the 28-foot height limit. Staff has included a condition of approval requiring a half-foot reduction in the second and third floor ceiling heights (from just over 9 feet to 8 feet, 6 inches), reducing the height of the segment by one foot and lowering the height of the segment to 29 feet from grade. The applicant has also modified the plans to include a third-level deck in the building segment in question to reduce massing in that building wall as seen from adjacent properties. Staff has included a condition of approval to require that deck be maintained in the plans submitted for building permit.

**ATTACHMENTS:**

1. Summary of Project Data
2. Draft Resolution V-1-17 with recommended Findings and Conditions of Approval
3. Aerial site map
4. Applicant's written statement of findings
5. Applicant's plans (annotated by staff)

# Summary of Project Data
# 805 Sierra Point Road

| | | | | |
|---|---|---|---|---|
| **ADDRESS** | 805 Sierra Point Road (NEW ADDRESS) | | | |
| **APN** | 007-522-200 | | | |
| **ZONING DISTRICT** | R-1 | | | |
| **APPLICATION #** | Building permit for new single-family home | | | |
| **Development Standard** | **Existing** | **Proposed** | **Min/Max** | **Status** |
| **Lot Area** | 6,621 SF | - | 5,000 SF | Per stamped survey. LLA recorded in 2016. |
| **Lot Slope** | 7% | n/c | n/a | **28' ht limit** |
| **Lot Coverage** | n/a | 2,641.75 SF | 2,648.4 SF or 40% | Complies with standard. |
| **Floor Area** | n/a | 4,689 SF or 0.71 FAR | 4,767 SF or 0.72 FAR | Complies with standard. |
| **Setbacks** | | | | |
| **N Side Lot Line** | n/a | 5' 11" | 5' | Complies with standard. |
| **S Side Lot Line** | n/a | 5' | 5' | Complies with standard. |
| **Rear Lot Line** | n/a | 15' | 10' | Complies with standard. |
| **Front Lot Line** | n/a | 17' | 15' (or 10' if topo survey finds slope is at least 15%) | Complies with standard. Note: Lake St frontage is front LL for purposes of calculating setbacks |
| **Height** | n/a | 30' | 28' | **Variance for height** |
| **15' from front lot line** | n/a | n/a | 20' within 15' of FLL | No structures within 15' of FLL |
| **Parking** | n/a | 2 covered | 2 covered, 2 uncovered | Complies with standard. |
| **Articulation** | n/a | - | n/a | Building walls do not meet articulation threshold |
| **Stormwater** | n/a | Required at building permit | n/a | Required at building permit |
| **Tree Removal** | n/a | 3 trees | n/a | Replacement trees required in landscaping plan at building permit |
| **Landscaping** | n/a | Required at building permit | 15% of the front setback area | Required at building permit |

Draft
RESOLUTION V-1-17

A RESOLUTION OF THE PLANNING COMMISSION
OF THE CITY OF BRISBANE
CONDITIONALLY APPROVING VARIANCE V-1-17
FOR A NEW SINGLE-FAMILY HOME EXCEEDING THE 28-FOOT HEIGHT LIMIT
AT 805 SIERRA POINT ROAD

WHEREAS, Mark Lee, Lee-Jagoe Architecture, Inc., applied to the City of Brisbane for Variance approval to construct a single-family dwelling with a maximum height of 30 feet from grade at 805 Sierra Point Road, such application being identified as V-1-17; and

WHEREAS, on October 10, 2017, 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 Variance and Grading Permit;

NOW THEREFORE, based upon the findings set forth hereinabove, the Planning Commission of the City of Brisbane, at its meeting of October 10, 2017 did resolve as follows:

> Variance V-1-17 is approved per the findings and conditions of approval attached herein as Exhibit A.

ADOPTED this 10th day of October, 2017, by the following vote:

AYES:
NOES:
ABSENT:

_____
Jameel Munir
Chairperson

ATTEST:

_____
JOHN A. SWIECKI, Community Development Director

DRAFT
**EXHIBIT A**

**Action Taken:** Conditionally approved Variance V-1-17, per the staff memorandum with attachments, via adoption of Resolution V-1-17.

**Findings:**

**Variance V-1-17**

1. The variance shall be subject to the conditions included herein to assure that the adjustment authorized shall not constitute a grant of special privilege inconsistent with the limitations upon other properties in the vicinity and within the R-1 zoning district in which the subject property is located.

2. Because of special circumstances applicable to subject property, specifically the lot's unusual flag-shape and northerly cross slope, the strict application of this title is found to deprive the subject property of privileges enjoyed by other properties in the vicinity and under identical zone classification, namely the ability to be developed with a home subject to a similar height maximum to those in the surrounding neighborhood and in compliance with other development standards of the R-1 zoning district, including floor area, lot coverage, and provision of on-site parking.

**Conditions of Approval:**

Prior to Issuance of a Building Permit

A. The applicant shall obtain a building permit and a grading permit prior to proceeding with construction. Plans submitted for the building and grading permits shall substantially conform to plans on file in the City of Brisbane Planning Department dated received September 5, 2017, with the following modifications:
    1. The ceiling heights of the second and third stories shall each be reduced a half foot.
    2. The third-level deck in the northwest building segment shall be retained in the plans submitted for building permit.
B. Plans submitted for grading permit review shall be subject to standard review requirements and procedures by the Department of Public Works.
C. Prior to issuance of a building permit, the applicant shall obtain an encroachment permit from the Department of Public Works for any construction activity and private improvements within the public right-of-way.
D. Prior to issuance of a building permit, the property owner shall enter into standard landscape maintenance agreements with the City.

E. 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

F. 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.

G. Water and sanitary sewer service and storm drainage details shall be subject to approval by the City Engineer.

H. Removal of protected trees or other trees for which a permit is required under BMC §12.12.050 is not authorized under this application.

I. 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.

J. 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.

K. Minor modifications may be approved by the Planning Director in conformance with all requirements of the Municipal Code.

L. The Variance permit approval shall expire two years from its effective date (at the end of the appeal period) if a Building Permit has not been issued for the approved project or if the Building Permit, once issued, is allowed to expire prior to final inspection.

**Aerial Site Map**
**805 Sierra Point Road**

**Attachment 3**



Attachment 4

October 05, 2017

Julia Capasso
City of Brisbane
Community Development Department
Building and Planning Division
50 Park Place
Brisbane, California 94005-1310

Project: Lei Residence
Re: Height Variance request
Permit Number #: B201700067

Dear Ms. Capasso:

The residential plans for the Lei Residence is in its final stage prior to obtaining a building permit. With the exception of two items, all plan check items have been addressed and approved by the plan checking agency and the City of Brisbane.

There has been a lot of time and effort put into this project to conform to the many requirements and regulations as adopted by the City of Brisbane. It was originally intended to have the design conform to all these regulations based upon the program requirements as requested by the Owner, Jimmy Lei. His program was to provide a home that he would currently live in and when grew older, he would move to the one story lowest floor as defined by an Accessory Dwelling Unit and his children would live upstairs. This is very common in his culture to have the family living together.

Because of the lot size and the slope of the lot, it was necessary to provide for a three-story home. Initially, the cut and fill balanced to 250 cubic yards maximum and the site was analyzed to have a lot slope of greater than 20%, therefore the home was designed to comply with the 30-foot maximum height limitation. The design included stepping the roof in increments as the structure followed the contours of the grades. Two of the three floor plates were lowered to 8 feet from 9 feet and the roof slope at the rear was reduced to 3 in 12 from 4 in 12 to even lower the roof height more. All these efforts allowed the roof height to be under the 30-height maximum.

Per the interpretation of the municipal code, the lot slope is not calculated based on the actual cross slope of the lot, but the slope from the midpoint of the rear lot to the midpoint of the front property line. This lot is a pan handle lot with no determinable front and rear lot line, therefore it is up to the planning department to assign which property lines qualifies as front and rear. The front property line was determined to abut Lake Street, therefore the calculated slope line from the rear to the front property line is about 15%, thus requiring the residence to have a maximum height of 28 feet, not 30 feet.

The slope of the lot is actually sloping around 45 degrees to the measurement as established by the planning department and is actually 21.67% per the survey, but is disallowed because of the code definition. We are requesting a variance to increase the building height from 28 feet to 30 feet for a very small portion of the home as outlined in the attached exhibit. Based upon this exhibit, the impact is minimal. We have made every effort to reduce the building height and cannot lower the roof height any further and still accomplish a marketable home.

LEE • JAGOE ARCHITECTURE
INCORPORATED
Mark B. Lee, Architect C012684
David E. Jagoe

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An alternative is to lower the pad, but this will increase the amount of exported dirt thus requiring a grading variance. Any lowering of the building will also increase the height of the retaining walls within the residence and could impact the size of the second floor bedrooms. The Owner does not want any flat roofs on the home for both design and potential leak problems. The deck at the upstairs sitting room was extended beyond the surface of the exterior wall to help soften the plane of the elevation.

We request your approval of this variance to continue forward and provide for a home that will be an asset to the community.

If you have any questions, please contact myself at your convenience. Thank you.

Sincerely,

Mark B. Lee

Mark B. Lee
Architect C012684