


City of Brisbane

Planning Commission Agenda Report

TO: Planning Commission For the Meeting of 2/10/11

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

SUBJECT: Zoning Text Amendment RZ-2-11 to Amend Brisbane Municipal Code Title 17, Chapter 17.32, Regarding Requests for Reasonable Accommodations for Housing for Persons with Disabilities and Height Limit Exceptions; City of Brisbane, applicant

Request: A new section is proposed to be added to the Municipal Code to provide an administrative procedure by which general exceptions to the Zoning Ordinance could be approved for reasonable accommodations for housing for persons with disabilities as required by State law. This would be intended to meet needs that cannot be addressed by the existing Accessibility Improvement Permit procedure for setback exceptions and the similar procedure now proposed for height limit exceptions.

In amending the height limit exceptions, an additional provision is proposed for solar energy systems to be installed atop existing buildings, and a number of outdated provisions are proposed to be eliminated.

Recommendation: Recommend that the City Council adopt the draft ordinance, via adoption of Resolution RZ-2-11.

Environmental Determination: A Negative Declaration was adopted by the City Council January 18, 2011, for the 2007-2014 Housing Element, including Program H.B.3.d which the proposed ordinance would implement. The alteration of existing facilities and the construction of small structures are categorically exempt from the California Environmental Quality Act per State CEQA Guidelines Sections 15301 and 15303. The exceptions to the use of these categorical exemptions referenced in Section 15300.2 do not apply.

Background: California Government Code Section 65583(c)(3) requires that the Housing Element include a program which will:

Address and, where appropriate and legally possible, remove governmental constraints to the maintenance, improvement, and development of housing, including housing for all income levels and housing for persons with disabilities. The program shall remove constraints to, and provide reasonable accommodations for housing designed for, intended for occupancy by, or with supportive services for, persons with disabilities.

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Note that “disability” as defined by the California Fair Employment and Housing Act (California Government Code Section 12955.3) includes mental disabilities as well as physical ones such as impaired mobility. According to the 2000 U.S. Census, approximately 14% of Brisbane’s population has a disability.

The State Attorney General has advised that, under the federal Fair Housing Act and the California Fair Employment and Housing Act, all jurisdictions should adopt a procedure for handling requests for reasonable accommodations, modifications or exceptions to zoning and other land use regulations and practices, when necessary to afford disabled persons “an equal opportunity to use and enjoy a dwelling” (see attached). He further advises against reliance upon standard variance or use permit procedures that use findings that may be insufficient under fair housing laws. He states that the reasonable accommodations procedure should deal with “whether a requested accommodation is reasonable within the meaning of fair housing laws,” which the FHA defines as not imposing “undue financial and administrative burdens” on the municipality or requiring a “fundamental alteration in the nature” of the City’s zoning regulations which, according to Robert Fields’ “A Handbook for Reasonable Accommodation,” would change in the primary purpose of the applicable rules, policies or procedures, and the practical components necessary to achieve this purpose.

The recently adopted 2007-2014 Housing Element contains the following program regarding constraints on providing housing for persons with disabilities:

Program H.B.3.d Adopt a general provision to allow ministerial approval by the Community Development Director, subject to a minimal fee, of exceptions to the Zoning Ordinance for reasonable accommodation for housing for persons with disabilities per Government Code Section 65583(c)(3), and specifically amend the height limit exceptions in the zoning ordinance to allow for approval of Accessibility Improvement Permits for elevators and accessible-van garages needed by persons with disabilities to exceed the applicable height limit.

Under the Housing Element’s adopted timelines, this program is to be implemented by the end of this year.

Staff Analysis: Setback exception procedures to accommodate accessibility improvements for persons with disabilities are already provided in Brisbane Municipal Code Section 17.32.070.A.1.f. The proposed height limit exception for accessibility improvements would generally follow this same format. The Zoning Administrator, following a noticed public hearing, would be authorized to grant exceptions to the height limit to accommodate accessibility improvements such as elevators and wheelchair van garage spaces, upon making required findings regarding the necessity for the exception, minimizing any visual impacts, avoiding

adverse impacts upon adjacent properties, and construction in compliance with building and fire codes.

To address any other possible requests for “reasonable accommodations,” a procedure is proposed to meet special needs that cannot be addressed through the height limit and setback exceptions, based in part upon the City of San Jose’s Requests for Reasonable Accommodation process (attached), which was specifically cited by the State Attorney General along with efforts by the City of Long Beach and Mental Health Advocacy Services, Inc., of Los Angeles. This would be added as a new Section 17.32.080

Amending Municipal Code Section 17.32.060 provides an opportunity to review the existing height limit exceptions. These provisions have not been updated since 1989.

BMC Section 17.32.060.A allows chimneys no more than 3 ft. wide or deep to exceed the height limit by no more than 4 ft., but changes to the Building Code have resulted in conflicts with this provision. In the 2001 Edition of the California Building Code, the new requirement for a spark arrester atop chimneys typically added approximately 1 ft. to their height, which the Code already required to be at least 2 ft. taller than any part of the building within 10 ft. To take these Building Code standards into account, this provision would be revised to allow chimneys no more than 3 ft. wide or deep to exceed the height limit by no more than 5 ft. except as required to comply with the California Building Code.

BMC Section 17.32.060.B allows “cupolas, flag poles, monuments, radio and other towers, water tanks, church steeples, mechanical appurtenances and similar structures” to exceed the height limit through Planning Commission approval of a Use Permit, rather than the more onerous Variance. This section would be amended to note the provisions provided for wireless telecommunications facilities (cell towers) in BMC Section 17.32.035. Specifically, BMC Section 17.32.035.G.3 requires approval of a Variance for such facilities to exceed 70 ft. in height, while BMC Section 17.32.035.D.f allows expansion of an existing support structure up to 70 ft. through approval of a Telecommunications Administrative Permit.

A simplified height exception procedure is proposed for solar energy systems installed atop existing buildings. It would be modeled on the formats adopted for Telecommunications Administrative Permits (BMC Section 17.32.032.D) and Sign Permits (BMC Section 17.36.060.C.2) issued by the Zoning Administrator. If the Zoning Administrator determines that the proposed system would not have a specific adverse impact upon the public health and safety, as provided by California Government Code Section 65850.5 and Health and Safety Code Section 17959.1(a), ten-days notice of the intended approval would be mailed to property owners and occupants immediately adjacent to and across the street from the site. They would then have the opportunity to comment in writing on the proposal before final action is taken.