

Commissioner Van Do

TuongVan Do
3/3/14

Dear City Council,

Please pardon my absence. I have a previously-scheduled mandatory meeting that conflicts with tonight's City Council meeting. As per our Planning Commission meeting on Thursday, 2/27/14, and in lieu of my absence, I am submitting a summary regarding my decision concerning the application of 8 Thomas Avenue that was decided by the Brisbane Planning Commission on November 14, 2013:

In sum, I approved the Mahn Quach's ("the applicant") Design Permit (DP-1-13) and Grading Permit EX-1-12 because:

1. the application complies with applicable Brisbane Municipal Codes;
2. the decision is based on applicable codes and applies the standards set forth in the current ordinance;
3. the decision upholds the current ordinance.

1. Application Complies with Applicable Ordinance

With regards to this application, the applicable code sections are: Brisbane Municipal Code Sections 17.12.040.L.2, 17.42.040, 15.01.081, 17.32.220. The first two provisions (17.12.040.L.2, 17.42.040) apply to the applicant's design permit while the latter two provisions (15.01.081, 17.32.220) apply to the applicant's grading permit. While the entire application is on appeal, the central issue pertains directly to the applicant's design permit which is governed by the first two provisions generally referred to as "the Ridgeline Ordinance".

2. Planning Commission Decision is Based on Applicable Codes and Standards

To approve a Design Permit, the planning Commission must make 10 applicable design permit findings:

(1) Ridgeline Development [Brisbane Municipal Code Section 17.12.040.L.2]

As per the ordinance, "[t]he planning commission shall find that the building's placement, height, bulk and landscaping will preserve those public views of the San Bruno Mountain State and County Park as seen from the community park and from the Bay trail along the Brisbane Lagoon and Sierra Point shorelines that are found to be of community-wide value." The Planning Commission met this charge by evaluating the application based upon the standards provided within the ordinance. As such, it is upholding the current law which permits building as long as applications are in compliance. The application at issue is in compliance.

Details of the other 9 applicable design requirements are discussed below.

(2) General Plan Consistency

As per the ordinance, "[t]he proposed development is consistent with the general plan and any applicable specific plan." This application is consistent with the general plan and the related policies. In fact, the general plan land use designation for this site is

for residential use. In terms of policies regarding ridgeline development and view protection and grading, Policies 83 and 18 apply. By meeting the Ridgeline Ordinance, this application meets Policy 83 because Policy 83 is implemented through the Ridgeline Ordinance itself. Policy 18 is met because this application seeks to find a balance of both minimizing grading and respecting and fitting comfortably within the topography by stepping the home down the hill.

(3) Compatibility with Adjacent Development

As per the ordinance, “[t]he orientation and location of buildings, structures, open spaces, and other features integrate well with each other and maintain a compatible relationship to adjacent development.” Here, the application meets the specific development regulations regarding the size of the building (floor area, lot coverage, and height) as well as placement (setbacks) for this zoning district. In relation to adjacent development, the already approved 88 Thomas Avenue application is the only adjacent development within the same zoning district and serves as the best comparative basis. Like 88 Thomas, this application would be located as low on the hillside as possible while retaining the 20 ft habitat corridor in the rear setback and its ranch style design compliments 88 Thomas Avenue’s modern architectural design.

(4) Potential Impacts on Adjacent Land Uses

As per the ordinance, “[p]roposed buildings and structures are designed and located to mitigate potential impacts to adjacent land uses.” While there may be potential impact on adjacent uses, it would affect private views from the lower apartment building along with those belonging to private properties in central Brisbane across Thomas Ridge to the Bay. Private views are not protected in the ordinance. The Ridgeline Ordinance protects “public views” specifically from the Lagoon and Sierra Point perspectives. As was discussed at length at the public hearings, the public views are at issue and what constitutes “view” is discretionary and individually interpretative meaning that the Planning Commission may use its own discretion as it balances this issue with other public interests. Furthermore, the application lowered its height to address the views from the specified public trails which helps to reduce the view impacts on existing private views.

(5) Natural Heating & Cooling

As per the ordinance, “[t]he project design takes advantage of natural heating and cooling opportunities through building placement, landscaping and building design to the extent practicable, given site constraints, to promote sustainable development and to address long term affordability.” In this application, the design includes windows placed in appropriate places which will allow for natural light throughout units and adding comfort and reducing the need for daytime lighting. The eaves provide shading adjusting to the solar heat throughout the seasons.

(6) Minimizing Traffic Effects

As per the ordinance, “[t]he site plan minimizes the effects of traffic on abutting streets through careful layout of the site with respect to location, dimensions of vehicular and pedestrian entrances and exit drives, and through the provision of adequate off-street

parking. There is an adequate circulation pattern within the boundaries of the development. Parking facilities are adequately surfaced, landscaped and lit.” The application meets this requirement because the driveway is accessed from Thomas Avenue and there will be 7 spaces, 3 more than the required 4. The proposed gate will not encroach on public space since its driveway length is adequate to allow a car to pull completely off the street while the gate is open.

(7) Appropriate Landscaping

As per the ordinance, “[t]he site provides open areas and landscaping to complement the buildings and structures. Landscaping is also used to separate and screen service and storage areas, break up expanses of paved area and define areas for usability and privacy. Landscaping is generally water conserving and is appropriate to the location. Attention is given to habitat protection and wildland fire hazard as appropriate.” To be in compliance, the application contains a conceptual landscaping plan that complements the building in scale and excludes tree species which would block views. The proposed plan uses a drip irrigation system that has low water use and proposes planting water conserving plants with permeable pavers that would minimize stormwater runoff.

(8) Noise Measures

As per the ordinance, “[t]he proposal takes reasonable measures to protect against external and internal noise.” The application meets this responsibility and is encompassed in the negative declaration that compels an acoustical analysis showing that the proposed design will limit exterior noise to 45 decibels in any habitable room.

(9) Avoiding Glare

As per the ordinance, “[c]onsideration has been given to avoiding off-site glare from lighting and reflective building materials.” Like requirement No. 8, the application meets this duty because it is governed by the negative declaration which includes a mitigation measure that requires (a) low level exterior lighting to be directed away from adjacent properties and not upward into the night sky which may result in off-site impacts upon neighboring properties and (b) an exclusion of highly reflective glass and other exterior building materials.

(10) Screening Utilities

As per the ordinance, “[a]ttention is given to the screening of utility structures, mechanical equipment, trash containers and rooftop equipment.” As with the other nine requirements, the application complies with this obligation: the PG&E meters and electrical boxes will be screened from view on the north side of the house and by landscaping along the interior side setback; the trash enclosures will be located behind a retaining wall enclosure adjacent to the driveway and behind front yard landscaping. Thus, the application meets all 10 requirements as laid out by the Ridgeline Ordinance.

The Ridgeline Ordinance also provides additional tools where the Planning Commission can and did use, at its discretion, to modify the proposed project on a case-by-case analysis to ensure that the application further complies with the ordinance:

. . . 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.

3. **Planning Commission Decision Upholds Current Ordinance**

Here, the applicant has made considerable modifications to his application in a good faith attempt to comply with the ordinance and the applicant's architect testified before the planning commission that: (a) varying the building's roofline, (b) orienting the building to minimize impact, and (c) locating on lower elevations were not done because they were not viable architectural options given the location and topography. However, in terms of locating on lower elevations, the applicant reduced the elevation as much as possible where "one corner cannot move any further". Additionally, the applicant reduced the height of the building from 35' to 25' which included reducing the square footage, chimney, height, and bulk of the structure. This adjustment is a full 10' lower than his original plans and well under the permitted height required by the ordinance.

In evaluating this application, the Planning Commission was tasked with balancing the individual community member's property right to build a family residence within a permissible building zone against the larger community interest of preserving the mountain, a public treasure. The Planning Commission employed the applicable law and its standards and found that the application met the necessary requirements without sacrificing the community interest as laid out in the ordinance. Hence, the application is in compliance and must be approved.