

City of Brisbane

Planning Commission Agenda Report

TO: Planning Commission For the Meeting of 2/25/10

FROM: Tim Tune, Senior Planner, via William Prince, Community Development Director

SUBJECT: **11 Industrial Way;** Use Permit UP-4-10, 1-Year Extension of Interim Use Permit UP-11-06 for Outside Storage of Statuary Within Fenced Yards; Marc Belluomini, Statue Factory, applicant; Sunquest Properties, Inc., owner; APN 005-340-080

Request: The Statue Factory requests that its Interim Use Permit for outdoor storage of statuary within the Baylands Subarea,, across the street from its manufacturing and warehousing facilities at 10 Industrial Way, be extended for 1 year, the length of its current lease. Two areas have been fenced: an approximately 100 ft. by 200 ft. area at the northeast corner of Bayshore Boulevard and Industrial Way and an approximately 50 ft. by 100 ft. area immediately north of 21 Industrial Way. The original Use Permit for this use was approved by the Planning Commission in 2001 (UP-7-01) and renewed in 2003 (U-19-03) and 2007 (UP-11-06).

Recommendation: Conditionally approve Use Permit UP-4-10 per the agenda report with attachments, via adoption of Resolution UP-4-10 with Exhibit A containing the findings and conditions of approval.

Environmental Determination: The operation of existing private facilities is categorically exempt from the provisions of the California Environmental Quality Act per Section 15311 of the State CEQA Guidelines. The placement of minor appurtenances accessory to existing commercial or industrial facilities is categorically exempt from the provisions of the California Environmental Quality Act per Section 15311 of the State CEQA Guidelines. The exceptions to these categorical exemptions referenced in Section 15300.2 do not apply, as was documented in staff's environmental analysis previously prepared for Use Permit UP-7-01 (the original Interim Use Permit for this use). There have been no significant environmental changes at the site since that analysis.

Applicable Code Sections: Brisbane Municipal Code Chapter 17.41, adopted June 10, 1996, establishes the process for approving interim uses in the Baylands subarea. Specifically, BMC Section 17.41.060 states the findings required for issuance of interim use permits, and BMC Sections 17.41.060.F and 17.41.070 list the mandatory conditions of approval for such permits.

Analysis and Findings: BMC Section 17.02.060 requires a finding of consistency with the general plan and any applicable specific plan adopted by the City Council for approval of use permits. BMC Sections 17.41.060.A-F require findings that the interim use will not be detrimental to the public health, safety or welfare, or injurious to nearby properties or improvements; that the interim use will not create any significant environmental impacts; that the interim use will not obstruct redevelopment; that all required public utilities and other infrastructure are or will be available; and that the use will provide a benefit to the property and/or the public.

Consistent with General/Specific Plan--General Plan Policy 332 provides for approval of interim uses in the Baylands Subarea. BMC Section 17.41.020 defines "interim use" as one that is not expressly authorized under the redevelopment plan, any specific plan or the zoning regulations, provided that the use is not expressly prohibited in the General Plan or BMC Section 17.41.030.

Not Detrimental or Injurious—The subject use is accessory to that which the Statue Factory conducts across the street in the M-1 District (Northeast Bayshore subarea). The other occupant of the subject property, Lazzari Fuel, has used a portion of its leasehold for outside storage for years predating the current C-1 Commercial Mixed-Use District zoning. No changes are proposed to the current hours of operation, Monday through Friday 8:00 a.m. to 4:30 p.m. and Saturday 8:00 a.m. to 2:00 p.m., which are compatible with existing uses in the vicinity. Because the Statue Factory operates as a retail business as well as manufacturing, open cyclone fence is used to secure the storage yards so stock can be displayed, even though the storage yards are not open to the public.

No Significant Environmental Impacts--Staff's previous environmental analysis for the original Interim Use Permit found no significant impacts. The site is located outside the identified areas of Bunker C oil, copper and lead contamination associated with the former railyard use surrounding the site. Volatile organic compounds, barium and chromium were detected in groundwater samples in the immediate vicinity some time ago. For the term of the subject use, this should not be significant issue, as long the existing underlying soils remain undisturbed.

No Obstruction to Redevelopment--No structures are involved with the subject use which would have to be removed in order to facilitate redevelopment of the site. The requested one-year term for the new Interim Use Permit is consistent with the lease for the property. No apparent conflict with the potential time frame for preparation and adoption of any specific plan to include the site is likely. Note that the site is not included in the Brisbane Baylands Phase 1 Specific Plan.

Availability of Required Utilities and Infrastructure—Utilities and access are available in the vicinity; although, this use does not need electricity, water or sewer. Although not within a designated flood zone, portions of the site historically have flooded during winter, but recent curb, sidewalk and storm drain improvements have reduced this problem. Dust control measures were implemented when the subject use was first established and have been maintained since.

If the yards were paved (which is not recommended as a condition of approval in this instance, due to the temporary nature of the use), stormwater from impervious surfaces would have to be piped to the City storm drain system, with measures provided to prevent silt or cement from entering, in compliance with the National Pollutant Discharge Elimination System requirements.

Benefits to the Property and the Public--BMC Section 17.41.060E requires that the use will provide a benefit to the property, such as the elimination of blight or hazardous conditions, and/or a benefit to the public, such as jobs, revenues, needed goods or services. BMC Section 17.41.060.F requires, in addition, that a program be established by the operator of the interim use to encourage the employment of Brisbane residents to the extent it is reasonably possible to do so.

Before the subject use was established, this corner had been a dumping ground, overgrown with brush and the site of a nonconforming billboard. The billboard was removed, and the site was cleared of weeds and debris. Expansion of its storage capacity has allowed the business to remain at this location and to continue to contribute sales tax to the City, both directly via retail sales and indirectly via its purchases from other local businesses. The Statue Factory has traditionally used word-of-mouth to fill job openings through its connections at Brisbane Hardware.

Attachments:

Draft Resolution UP-4-10 with Findings and Conditions of Approval
Staff's Photographs of Site

draft
RESOLUTION UP-4-10

A RESOLUTION OF THE PLANNING COMMISSION OF BRISBANE
CONDITIONALLY APPROVING INTERIM USE PERMIT UP-4-10
TO PERMIT STORAGE OF STATUARY
AT 11 INDUSTRIAL WAY

WHEREAS, Marc Belluomini, Statue Factory, the applicant, applied to the City of Brisbane for Interim Use Permit approval for storage of statuary at 11 Industrial Way, such application being identified as Use Permit UP-4-10; and

WHEREAS, on February 25, 2010, the Planning Commission conducted a hearing of the application, 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 agenda report relating to said application, the plans and photographs, 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 project is categorically exempt from the provisions of the California Environmental Quality Act; and

WHEREAS, the Planning Commission of the City of Brisbane hereby makes the findings attached herein as Exhibit A in connection with the Interim Use Permit.

NOW THEREFORE, based upon the findings set forth hereinabove, the Planning Commission of the City of Brisbane, at its meeting of March 11, 2010, did resolve as follows:

Interim Use Permit Application UP-4-10 is approved per the conditions of approval attached herein as Exhibit A.

ADOPTED this twenty-fifth day of February, 2010, by the following vote:

AYES:
NOES:
ABSENT:

THERESA MATURO
Chairperson

ATTEST:

WILLIAM PRINCE, Community Development Director

EXHIBIT A

Action Taken: Conditionally approve Interim Use Permit UP-4-10, via adoption of Resolution UP-4-10.

Findings:

1. The use permit is consistent with the general plan and any applicable specific plan adopted by the city council, per 1994 General Plan Policy 332.
2. The interim use and the conditions under which it will be operated will not be detrimental to the public health, safety or welfare, or injurious to properties or improvements in the vicinity, as detailed in the agenda report.
3. The proposed interim use will not create any significant unmitigated adverse environmental impacts, as determined by a previous environmental analysis pursuant to the California Environmental Quality Act and discussed in the agenda report.
4. The interim use will not obstruct, interfere with, or delay the intended redevelopment of the property in accordance with the uses anticipated in the General Plan or any adopted specific plan applicable to the site, in that no new permanent structures are proposed, and in that the term of the Interim Use Permit will be limited so as not to conflict with the potential time frame for preparation and adoption of a possible specific plan to include the site.
5. Public utilities and other infrastructure improvements required in order for the interim use to be conducted in a safe, sanitary, and lawful manner are located within the vicinity.
6. The use will provide the following benefits: (a) A benefit to the property, in the form of maintenance of the site free of blight or unsightly or hazardous conditions, and (b) A benefit to the public, in the form of the continued provision of jobs, goods and sales tax revenues by a long-standing local business.
7. The program to encourage employment of Brisbane residents in the installation and operation of the use will be through continued use of long-standing business contacts in Central Brisbane.

Conditions of Approval

- A. The Interim Use Permit is for outdoor storage only, as described in the agenda report. No manufacturing shall take place on the leased areas. The leased areas shall not be open to the public. No storage off-site is permitted.
- B. The use shall operate so as to create no visible dust emissions in compliance with Bay Area Air Quality Management District standards. Gravel or crushed rock shall be used to control dust, subject to the approval of the Public Works Department.

(continued)

- C. If the yards are paved, stormwater from impervious surfaces shall be piped to the City storm drain system. Any drainage must be designed to prevent silt or cement from entering the storm drain, in compliance with the National Pollutant Discharge Elimination System requirements. A Grading Permit shall be obtained for any grading involving more than 5 cu. yds. of fill.
- D. The leased areas and their street frontages shall be maintained weed- and debris-free for the duration of the Use Permit.
- E. The owner of the property and the operator of the interim use shall furnish the City with an agreement (or a copy of a lease containing such agreement) that: (i) the operator's right to possession of the premises for the purpose of conducting the interim use is dependent upon the interim use permit having been granted and maintained in full force and effect; and (ii) the operator's right to possession of the premises for the purpose of conducting the interim use will terminate upon any expiration or revocation of the interim use permit or adoption of a specific plan which includes the property; and (iii) it shall be the responsibility of the owner to terminate the operator's possession of the premises upon any expiration or revocation of the interim use permit if the operator continues to utilize the premises for the conduct of such interim use.
- F. The permittee shall be jointly and severally liable for all costs and expenses, including attorney's fee, the City may incur to enforce the conditions of the interim use permit upon any breach thereof by the permittee, or to abate and remove the interim use upon any failure by the permittee to discontinue such use, or to evict the operator of such use, upon the expiration or revocation of the interim use permit.
- G. The applicant shall continue its stated efforts to encourage employment of Brisbane residents in the operation of the use.
- H. Minor modifications may be approved by the Planning Director in conformance with all requirements of the Municipal Code.
- I. This Interim Use Permit is subject to the revocation procedures established in Brisbane Municipal Code Chapter 17.48 should the use not comply with its conditions of approval, or in any way prove to be a nuisance, injurious or detrimental to property or improvements in the neighborhood or to the general welfare of the City, or for any reason whatsoever that the City Council or Redevelopment Agency deems in its sole discretion that makes continuation of this use not satisfactory, or in the event of the repeal of the Interim Use Ordinance.
- J. This Interim Use Permit shall expire one year from its effective date (at the end of the appeal period).