

City of Brisbane

Planning Commission Agenda Report

TO: Planning Commission For the Meeting of 9/9/10

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

SUBJECT: **338 Kings Road;** Variance V-5-10, Variance for Pond and Pumps within 5 Ft. West Side Setback; Roy Muller, applicant; Roy & Diane R. Muller, owners; APN 007-471-060 & -070

Update: This item was continued from the meeting of August 26th at the request of the applicant.

At the previous meeting, the attached letters were received from neighbors at 334 and 326 Kings Road, questioning the stability of the pond and hillside below due to incidents in which water from the pond washed soil down into the gutter along the street. Concerns were also raised about work done without permits and construction extending beyond bounds of the property. A response on behalf of the applicant is also attached.

To address concerns about slope stability and erosion, recommended Condition of Approval A would require that engineering calculations be submitted for the retaining walls to assure that they are adequately designed to support their loads. The pond would also be required to be modified so that its depth would be less than 24 inches, reducing its volume and, thus, its potential to result in erosion, particularly since the design of its drainage discharge would be subject to the approval of the Public Works Department per recommended Condition D.

Regarding work done without permits, a correction notice was posted on the property by the Building Inspector on February 2nd, noting that the unpermitted work included a new patio cover, hot tub deck, retaining wall, electrical wiring, and the fish pond with pumps. The owner consented to an on-site inspection, which resulted in a detailed correction list. Plans for a Building Permit were submitted, and the applicant was informed that a Variance would be required for the pond and pumps. The application subsequently submitted was deemed complete August 12th and scheduled for public hearing. Recommended Condition A would require that the applicant proceed with obtaining the Building Permit for all nonexempt work.

To address concerns about work done beyond the property line, recommended Condition B would require that, prior to issuance of the Building Permit, the property line be surveyed to confirm that all improvements are located on the subject property. Any improvements, including

fencing, found to be located off-site would be required to be removed or relocated. Usually, property line disputes are considered a civil matter between the private parties involved, but the City's requirement for a property survey is a standard condition of approval for setback variances.

Recommendation: Conditionally approve Variance V-5-10 per the agenda reports with attachments, via adoption of Resolution V-5-10 with Exhibit A containing the findings and conditions of approval.

Attachments:

- Updated Draft Resolution with Findings and Conditions of Approval
- 8/19/10 Letter from Judy Pokorny
- 8/25/10 Letter from Tim & Diane Cannon
- 8/30/10 Letter from Lany Muller
- Agenda Report for 8/26/10 Meeting with Attachments

UPDATED DRAFT
RESOLUTION V-5-10

A RESOLUTION OF THE PLANNING COMMISSION OF BRISBANE
CONDITIONALLY APPROVING VARIANCE V-5-10
TO PERMIT A POND AND PUMPS IN THE SIDE SETBACK
AT 338 KINGS ROAD

WHEREAS, Roy Muller, the applicant, applied to the City of Brisbane for Variance approval for a koi pond and pumps in the west side setback at 338 Kings Road, such application being identified as Variance V-5-10; and

WHEREAS, on August 26 and September 9, 2010, the Planning Commission conducted hearings 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 reports 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 proposed 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 Variance.

NOW THEREFORE, based upon the findings set forth hereinabove, the Planning Commission of the City of Brisbane, at its meeting of September 9, 2010, did resolve as follows:

Variance Application V-5-10 is approved per the conditions of approval attached herein as Exhibit A.

ADOPTED this ninth day of September, 2010, by the following vote:

AYES:
NOES:
ABSENT:

JAMEEL MUNIR
Chairman

ATTEST:

JOHN SWIECKI, Interim Community Development Director

**DRAFT
EXHIBIT A**

Action Taken: Conditionally approve Variance V-5-10 per the agenda reports with attachments, via adoption of Resolution V-5-10.

Findings:

1. The variance shall be subject to such conditions as will assure that the adjustment hereby authorized shall 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, as listed below.
2. Because of special circumstances applicable to subject property, specifically the site's steep topography with the more flatter topography located toward the west side, the strict application of this title is found to deprive subject property of privileges enjoyed by other properties in the vicinity and under identical zone classification, namely a water feature of sufficient size within which to maintain koi fish.

Conditions of Approval:

- A. A Building Permit shall be obtained for the pumps and all work not exempt per California Building Code Appendix Chapter 1, Section 105.2. The plans submitted for a Building Permit shall include housing for the recirculating pump to mitigate sound emissions. Engineering calculations for the retaining walls shall also be submitted. The Building Inspector shall confirm that the depth of the pond is less than 24 inches, so as not to be subject to the Building Code.
- B. Prior to issuance of the Building Permit, a survey of the western property line prepared by a licensed surveyor or qualified engineer shall be submitted to confirm that all improvements are located on the subject property and that no decks or hot tubs are located less than 5 ft. from the property line. Any arbors or gazebos shall comply with the setback exceptions provided in Brisbane Municipal Code Section 17.32.070.A.2. Any improvements, including fencing, located off-site shall be removed or relocated prior to Building Permit final inspection.
- C. Prior to issuance of the Building Permit, a Declaration of Merger shall be signed by the property owners in the presence of a Notary Public and returned to the City for recordation.
- D. The pond discharge drain shall be plumbed to drain to the sanitary sewer system as approved by the Public Works Department.
- E. Minor modifications may be approved by the Planning Director in conformance will all requirements of the Municipal Code.

(continued)

- F. The Variance shall expire two years from its effective date (at the end of the appeal period) if the Building Permit is not issued before that date.