



CITY COUNCIL AGENDA REPORT

Meeting Date: September 3, 2020

From: John Swiecki, Community Development Director

Subject: 338 Kings Road; Appeal of Grading Review EX-4-19; Appeal of Planning Commission denial of proposed grading plan involving approximately 357 cubic yards of soil cut and export to accommodate a new driveway and additions, including a two-car attached garage, for an existing single-family dwelling; Abraham Zavala, applicant; Huang John & Chen Joy Trust, owner

Community Goal/Result

Community Building - Brisbane will honor the rich diversity of our city (residents, organizations, businesses) through community engagement and participation.

Purpose

To consider the appeal of the Planning Commission's denial of planning application EX-4-19.

Recommendation

Uphold the appeal and approve the application, subject to the findings and conditions of approval in the attached draft Resolution 2020-53.

Background

The subject 6,400 square foot property is currently developed with a 1,740 square foot single-family dwelling with no off-street parking. The residence is accessed from the street via an on-grade stairway. The project proposes approximately 357 cubic yards of soil cut and export to accommodate site access improvements and additions to the existing residence, including a new driveway, two-car garage, elevator, and entry stairway at the ground level, an accessory dwelling unit at the second floor, and minor additions to the main dwelling at the second and third floors. The project would use and expand an existing curb cut serving 334 Kings Road that traverses the subject property to allow safe vehicular ingress and egress for both properties. The project complies with the development standards of the R-1 Residential District and would provide off-street parking for a site without any existing off-street parking or on-street parking along its frontage.

Although the project complies with all development standards of the R-1 District, BMC Section 17.32.220 requires Commission review of grading activity when more than 50 cubic yards of material are to be removed. While there are no findings specified in the zoning ordinance for evaluating grading proposals, in 2003 the Planning Commission adopted guidelines based on several General Plan policies to guide their review on such applications. These guidelines address design-level considerations such as relationship to the natural topography, retaining wall visibility, and impacts to trees on the property or in the street. The full text of the

guidelines is found in in Attachment J of the attached June 25, 2020 Planning Commission agenda report.

Project History

The application was first considered by the Planning Commission on February 27, 2020. The applicant's initial plans called for removal of one mature Coast live oak tree in the street to accommodate expansion of the existing curb cut and driveway within the right-of-way (original project plans are included in Attachment 9). Staff had recommended approval of the application with the recommendation that the City Engineer collect in-lieu fees to fund replacement tree planting at a 1:1 ratio, as permitted by the 2003 guidelines.

The Planning Commission voted 4-0-1 (Commissioner Gomez absent) to deny the application as they did not feel removal and replacement of the tree was appropriate. They also expressed concern with the safety of the proposed project and with its potential impact on site drainage, although the 2003 guidelines do not address geotechnical feasibility or hydrological impacts. Those technical issues are by State law under the purview of licensed engineers, ultimately the City Engineer in the case of grading permits.

Subsequently at its meeting of May 14, 2020, the Planning Commission granted the applicant's request to reconsider the application based on substantial revisions proposed to the proposed driveway design to avoid impacting the street tree in question.

Planning Commission Reconsideration (June 25, 2020)

The Planning Commission considered revised project plans on June 25, 2020 (see Attachment 3). The revised plans reduced the footprint of excavation and eliminated the previously proposed expansion of the driveway's western edge, mitigating the direct conflict with the closest Coast Live oak street tree.

Staff recommended a condition of approval to advise the City Engineer to require an arborist report at the time of grading and building permit applications to confirm whether or not adjacent street trees would be harmed by the project construction and would require removal and replacement. The recommended conditions of approval further recommended that if the project was found to damage the health of any adjacent street tree, the City Engineer consider requiring funds to plant replacement street trees reaching similar canopy height at maturity at a 3:1 ratio in the vicinity of the project.

The Planning Commission voted 5-0 to deny the revised application, finding that removal and replacement of the trees would not be appropriate due to the role the trees play in slope stabilization, and that the applicant did not demonstrate the adjacent Coast Live oak street tree would be preserved. Specifically, the Commission was concerned with potential impacts to the tree's root system due to excavation and trenching during construction, and potential impacts to the tree trunk from cars exiting the garage.

The June 25, 2020 Planning Commission staff report, minutes and resolution can be found as Attachments 4-6 of this staff report.

Appeal by Property Owners

The property owners, John Huang and Joy Chen, have appealed the Planning Commission's denial of the application on the grounds that the Commission made an assumption regarding the project's impact to the adjacent street trees without sufficient evidence, and that the Commission's finding of potential conflict between cars backing out of the proposed garage and the adjacent street trees was unfounded. The appeal and a supplemental statement are attached (Attachment 2) for Council's reference.

Discussion:

As noted in the Background section, there are no findings codified in the BMC regarding circumstances under which grading review applications may be approved or denied by the Planning Commission, or the City Council on appeal. The adopted 2003 guidelines have been used by the Commission in their action on such applications, and may be used by the City Council in its review of the appeal.

With the conditions of approval contained in the attached Resolution, staff believes the project **would meet** the guidelines for approval as noted below.

- **The proposed grading is minimized and designed to reflect or fit comfortably with the natural topography.**

The project meets this guideline. The proposed excavation is limited to the footprint of the additions, required driveway widening, and new pedestrian access stairway for access to the house and ADU from the street. The grading plan allows the addition to sit within the hillside without significantly altering the surrounding topography. The location and volume of the proposed excavation is the minimum necessary to allow the site to provide off-street parking consistent with the design standards in Chapter 17.34 of the BMC which limit driveway grades to no more than 20%. The proposed excavation is also the minimum necessary to allow safe egress and ingress for the adjoining property at 334 Kings Road and is compliant with the recorded vehicular access easement benefitting 334 Kings Road.

- **The proposed grading is designed to avoid large exposed retaining walls.**

The project meets this guideline. The grading plan proposes one approximately eight foot tall retaining wall within a portion of the front setback, extending into the public right-of-way, in conjunction with the new on-grade stairway providing access to the home from the street. The conditions of approval would minimize the visual impact of this wall by requiring vegetative screening, or application of varying finish materials or textures to break up the massing of the wall, at the applicant's option at building permit.

- **The proposed grading is designed to conserve existing street trees, any California Bay, Laurel, Coast Live Oak or California Buckeye trees, and three or more trees of any other species having a circumference of at least 30 inches measured 24 inches above natural grade. Where removal of existing trees is necessary, planting of appropriate replacement trees is provided.**

The applicant's grading plan is designed to conserve existing street trees and does not propose removal of any trees on the subject property. The City Engineer will impose conditions on the grading permit, reflected in Condition of Approval B.4 the attached Resolution relative to the tree's preservation during and post-construction of the project.

- **The proposed grading complies with the terms of the San Bruno Mountain Area Habitat Conservation Plan Agreement and Section 10(a) Permit, if and as applicable.**

This finding does not apply as the subject property is not located within the boundaries of the San Bruno Mountain Area Habitat Conservation Plan.

Fiscal Impact

None. If the City Council upholds the appeal and approves the application, the applicant would submit grading and building permit applications and pay the requisite plan check and application fees for both.

Measure of Success

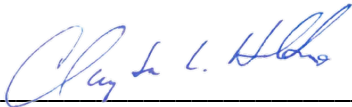
Final resolution of this matter.

Attachments

1. Draft City Council Resolution 2020-53
2. Applicant's appeal letter and supporting statements
3. Project plans
4. Planning Commission Resolution EX-4-19
5. Planning Commission Minutes (June 25, 2020)
6. Planning Commission Agenda Report (June 25, 2020; plans extracted and attached to this report as Attachment 4)
7. Planning Commission Minutes (February 27, 2020)
8. Planning Commission Agenda Report (February 27, 2020)
9. Written correspondence received as of 8/27/2020



John Swiecki, Community Development Director



Clay Holstine, City Manager