

City of Brisbane

Planning Commission Agenda Report

TO: Planning Commission For the Meeting of 5/14/2020

SUBJECT: **Grading Review EX-4-19; 338 Kings Road; R-1 Residential District;** Grading Review for approximately 330 cubic yards of soil cut and export to accommodate a new driveway, attached garage, and additions for an existing single-family dwelling on a 6,400 square-foot lot with a 43% slope; Abraham Zavala, applicant; Huang John & Chen Joy Trust, owner.

SUPPLEMENTAL REPORT:

The Planning Commission held a public hearing on this application on February 27, 2020. After closing the public hearing, the Planning Commission voted to deny the application primarily due to the project impacts to a mature Coast live oak street tree, among other concerns with hydrology impacts and street improvement design. However, because no findings of denial were prepared or adopted at the time of the Planning Commission's action, the Planning Commission's vote was not legally binding. Per the City Attorney, in order for the Planning Commission action to be effective, the Commission would need to adopt a revised resolution containing the findings of denial. A revised resolution containing findings of denial is attached for the Commission's reference.

However, during the Commission's recess due to the Countywide Shelter in Place order, the applicant revised the project in response to the Commission's concerns regarding impacts to the mature street trees (see attached letter from Mr. Zavala) and requests the Planning Commission reconsider the application. The applicant's revised plans are not attached to this report and would be subject to review at a public hearing should the Commission vote to reconsider the application.

The motion to grant reconsideration must be made by a Commissioner who voted to deny the application at the February 27, 2020 public hearing. All Commissioners except for Commissioner Gomez, who was absent, voted in favor of denial at the February 27 hearing. The application would then be scheduled for a future public hearing and a public hearing notice would be mailed to neighbors per standard procedure.

RECOMMENDATION: That the Commission grant the applicant's request for reconsideration of the application and for the application to be scheduled for a future public hearing.

If the Commission wishes to deny the applicant's request, the Commission may adopt the attached resolution, containing findings of denial .

ATTACHMENTS:

EX-4-19
May 14, 2020 Meeting
Page 2 of 2

- A. Draft Resolution EX-4-19 with Findings Denial
- B. Request from the applicant for reconsideration of revised project
- ~~C. February 27, 2020 Planning Commission staff report~~
- ~~D. February 27, 2020 Planning Commission draft minutes (included in the agenda packet)~~



Julia Ayres, Senior Planner



John Swiecki, Community Development Director

Draft
RESOLUTION EX-4-19

A RESOLUTION OF THE PLANNING COMMISSION OF BRISBANE
DENYING GRADING PERMIT REVIEW EX-4-19
FOR DRIVEWAY AND SITE ACCESS IMPROVEMENTS AND ADDITIONS TO
AN EXISTING SINGLE-FAMILY DWELLING AT 338 KINGS ROAD

WHEREAS, Abraham Zavala applied to the City of Brisbane for Grading Permit review to construct additions, including a two-car garage and attached accessory dwelling unit, to an existing single-family dwelling with no off-street parking that will require approximately 330 cubic yards of soil excavation and export from the site at 338 Kings Road, such application being identified as EX-4-19; and

WHEREAS, on February 27, 2020, the Planning Commission conducted a hearing of the application, publicly noticed in compliance with Brisbane Municipal Code Chapters 1.12 and 17.54, 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 staff memorandum relating to said application, and the written and oral evidence presented to the Planning Commission in support of and in opposition to the application; and

WHEREAS, the Planning Commission closed the public hearing and came to a consensus to deny the project based on its impacts to mature street trees in the vicinity of the project, potential hydrology impacts, and changes to the public right-of-way, and deferred adoption of findings of denial to the next regular Planning Commission meeting; and

WHEREAS, the Planning Commission finds that the proposed project is categorically exempt from the provisions of the California Environmental Quality Act; pursuant to Section 15301(e) of the State CEQA Guidelines; and

WHEREAS, the Planning Commission of the City of Brisbane hereby makes the findings attached herein, as Exhibit A, in connection with the requested Grading Permit review;

NOW THEREFORE, based upon the findings set forth hereinabove, the Planning Commission of the City of Brisbane, at its meeting of May 14, 2020 did resolve as follows:

Grading Permit review EX-4-19 is denied without prejudice, and City Engineer issuance of the grading permit as proposed is not recommended.

ADOPTED this 14th day of May, 2020, by the following vote:

AYES:
NOES:
ABSENT:

Pamala Sayasane
Chairperson

ATTEST:

JOHN A. SWIECKI, Community Development Director

**DRAFT
EXHIBIT A**

Action Taken: Denial without prejudice of Grading Permit Review EX-4-19, per the February 27, 2020 and May 14, 2020 staff memorandums with attachments, via adoption of Resolution EX-4-19.

Findings:

Grading Permit EX-4-19

- As indicated by the applicant's grading plan and site plan, the proposed excavation is limited to the footprint of the additions and necessary site access from the street, and is the minimum necessary to allow the site to conform to the parking requirements of the R-1 Residential District and design standards contained in Chapter 17.34 of the Municipal Code.
- The proposed grading would result in one exposed retaining wall of approximately nine feet in height within a portion of the front setback, extending into the public right-of-way.
- The proposed grading is not designed to conserve existing street trees (as defined by BMC Section 12.12.020), and specifically would require removal of a mature Coast live oak street tree and potentially impact the health of a second mature Coast live oak street tree.
- The subject property is not located within the boundaries of the San Bruno Mountain Area Habitat Conservation Plan.



**DESIGN AND ENGINEERING,
INC.**

ATTACHMENT 6-I

255 Reichling Avenue
Pacifica, CA 94044

T 650-553-4031
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azdesign@azdesignandengineering.com

March 10, 2020

Community Development Department
City of Brisbane
50 Park Place, Brisbane, CA 94005

Subject: 338 Kings Road, Brisbane, CA 94005

Dear Planning Commission,

I am requesting consideration of the proposed denial of the application for the property that is the subject of this letter. We filed revised plans, which address concerns regarding the tree impact and driveway width.

Sincerely,

Abraham Zavala
Abraham Zavala, P.E.
RCE 60620 Exp. 12/31/20

BRISBANE PLANNING COMMISSION
Action Minutes of May 14, 2020
Virtual Meeting

CALL TO ORDER

Chairperson Sayasane called the meeting to order at 7:30 p.m.

ROLL CALL

Present: Commissioners, Gomez, Gooding, Mackin, Patel and Sayasane.

Absent: None.

Staff Present: Community Development Director Swiecki, Senior Planner Ayres, Associate Planner Robbins

ADOPTION OF AGENDA

Commissioner Gomez moved adoption of the agenda. Commissioner Patel seconded the motion and it was approved 5-0.

CONSENT CALENDAR

Commissioner Gooding moved adoption of the consent calendar (agenda items A and B). Commissioner Patel seconded the motion and it was approved 5-0.

ORAL COMMUNICATIONS

There were no oral communications.

WRITTEN COMMUNICATIONS

Chairperson Sayasane acknowledged two written communications, one regarding walkable streets and the other regarding item C.

OLD BUSINESS

- C. **Grading Review EX-4-19; 338 Kings Road; R-1 Residential District; Grading Review for approximately 330 cubic yards of soil cut and export to accommodate a new driveway, attached garage, and additions for an existing single-family dwelling on a 6,400 square foot lot with a 43% slope; Abraham Zavala, applicant; Huang John & Chen Joy Trust, owner. (Administrative note: no findings of denial regarding this item were adopted during the previous meeting of February 27, 2020; therefore, final action on this item was continued to this meeting.)**

Senior Planner Ayres gave the staff presentation.

Brisbane Planning Commission Minutes
May 14, 2020
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The Planning Commission discussed with staff their concerns with their purview of authority when reviewing grading permits, particularly with potential impact to site hydrology.

At the request of staff, the meeting was recessed for 5 minutes to address technical issues associated with the call-in public access to the meeting.

Chairperson Sayasane brought the meeting back to order and the recognized members of the public wishing to address the Commission.

Prem Lall, Brisbane resident, spoke against the project.

There were no other members of the public wishing to address the Commission.

After some discussion, Commissioner Mackin made a motion to deny the applicant's request for reconsideration and adopt findings of denial for the project, but later withdrew the motion.

Following further discussion, Commissioner Patel moved to grant the applicant's request to reconsider the application at a future public hearing. Commissioner Gooding seconded the motion and the motion was approved 5-0.

NEW BUSINESS

D. Zoning Text Amendment RZ-1-20; Various zoning districts; Zoning text amendments to update the existing accessory dwelling unit (ADU) regulations in the zoning ordinance to comply with updated State regulations, and to increase the existing floor area ratio (FAR) exception of 200 square feet to 400 square feet for covered parking on substandard lots; City of Brisbane, applicant.

Associate Planner Robbins gave the staff presentation.

The Planning Commission identified concerns about potential implications of increasing the FAR covered parking exception in conjunction with the required, limitations on ADU parking requirements in State legislation.

Chairperson Sayasane opened the public hearing.

With no one coming forward to address the Commission, Commissioner Gooding moved to close the public hearing. Commissioner Gomez seconded the motion and it was approved 5-0.

Following deliberation, Commissioner Mackin moved to recommend City Council adoption of the draft ordinance by adopting Resolution RZ-1-20. Commissioner Gooding seconded the motion and the motion was approved 5-0.

Chairperson Sayasane read the appeals process of Planning Commission actions.

ITEMS INITIATED BY STAFF

GUIDELINES FOR PLANNING COMMISSION REVIEW OF GRADING PERMITS
Adopted 11/13/03

Grading plans submitted for Planning Commission review and approval per Brisbane Municipal Code Sections 15.01.081 & 17.32.220 should, in addition to the information required by BMC Section 15.01.090, include sufficient information for the Planning Commission to make the following findings:

- The proposed grading is minimized and designed to reflect or fit comfortably with the natural topography (General Plan Policies 43, 245 & 312 and Program 18a).

Although the Municipal Code sets a 250 cubic yard threshold for Planning Commission review of Grading Permits, the fact that a project may include grading of more than 250 cubic yards alone is not considered a significant or adverse impact, in that a building alone can require that amount just to set it into the hillside without significantly changing the surround natural topography. Nonetheless, the Planning Commission reserves the right to consider alternative grading plans for any Grading Permit subject to its review and may reject projects proposing unnecessary amounts of excavation contrary to the policies and programs in the City's General Plan.

- The proposed grading is designed to avoid large exposed retaining walls (General Plan Policies 43 & 245).

Any retaining walls will be designed to minimize their visual impact by complementing their natural setting and/or by relating to the architecture of the rest of the proposed development through use of one or more of the following:

- Color,
 - Texture,
 - Construction detailing,
 - Articulation;
 - Landscaping (non-invasive, water-conserving, low flammability).
- The proposed grading is designed to conserve existing street trees (as defined by BMC Section 12.12.020), 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. (General Plan Policies 124, 125 & 261 and Programs 34a, 35d, 245a & 320a).

In reviewing any proposal to remove trees protected per BMC Section 12.12.020, the Planning Commission shall consider the following criteria per BMC Section 12.12.050.C:

1. The condition of the tree with respect to disease, imminent danger of falling, proximity to existing or proposed structures and interference with utility services.
2. The necessity to remove the tree for economic or other enjoyment of the property.
3. The topography of the land and the effect of the tree removal upon erosion, soil retention, and the diversion or increased flow of surface waters.
4. The number, species, size, and location of existing trees in the area and the effect the removal would have upon shade, privacy impact, and scenic beauty of the area.
5. The number of healthy trees the property is able to support according to good forestry practices.

The Planning Commission may require that one or more replacement trees be planted of a species and size and at locations as designated by the Commission. The ratio of replacement trees required may be based upon the public visual impact of the trees removed. Native trees shall be replaced at a minimum ratio of 3 trees of the same or other approved native species planted for each 1 removed. Trees removed on site may be replaced with trees planted in the public right-of-way when located close enough to mitigate the local impact of the tree removal. Replacement trees planted within the public right-of-way shall be from the City's Street Tree List, as approved by the Commission. Minimum replacement tree size shall be 15-gallons, except that larger specimens may be required to replace existing street trees.

- 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 (General Plan Policy 119 and Program 83b).

Ayres, Julia

From: Prem Lall <premlall@yahoo.com>
Sent: Thursday, May 28, 2020 12:27 PM
To: Breault, Randy; Ayres, Julia
Cc: Schumann, Michael; Nancy Roeser; Dean DeCastro; Patricia Flores; Swiecki, John; Planning Commissioners
Subject: Re: Soils report for 338 Kings project requested

Hello Julia,

It is fine to add our correspondence to the record and to forward to the Planning Commission as long as the correction I emailed to you is also included, which I do not see in your email:

From: Prem Lall
To: Breault, Randy; Ayres, Julia
Sent: Wednesday, May 27, 2020, 5:15:45 PM PDT
Subject: Re: Soils report for 338 Kings project requested

Correction: "since it will flow down the mountainside to the two houses across the street from 338 Kings (namely, 333 and 339 Kings) as well as the four houses down slope on Humboldt (namely, 738, 740, 760, and 764 Humboldt)."

I have added the Planning Commission's email address to our correspondence to reach them directly as well.

As mentioned previously, the applicant must show that his project will not adversely affect the six homes down slope from his property with damage to retaining walls and wooden foundations, among other things, due to the transfer of water currently absorbed during rainfall by the previously referenced 391 cubic yards of soil at 338 Kings to the properties at 333 Kings, 339 Kings, 738 Humboldt, 740 Humboldt, 760 Humboldt, and 764 Humboldt upon the removal of that soil.

I am willing to discuss the issue with him if he is open to the idea.

NOTE: I have removed the original email addresses of Adrian DeCastro and Patricia Flores from the conversation as those email addresses seem no longer to be functional and have added the new email address of Patricia Flores to the conversation.

Thank you.

Prem Lall
Brisbane resident
On Thursday, May 28, 2020, 9:59:29 AM PDT, Ayres, Julia <jayres@ci.brisbane.ca.us> wrote:

Hi Prem,

Correct, the revised plans were not presented to the Planning Commission on May 14th- only the applicant's

letter requesting reconsideration of the project. This was explained in [the supplemental report](#) from staff to the Commission at the May 14th meeting.

Because the Commission granted the reconsideration of the project, the revised plans will be presented in the staff report for the future hearing. When the hearing date is set, we will send out mailed notices to property owners within 300 feet of the property just like last time to advertise the hearing date. The meeting materials would be available to the public any time after the notice is sent out and would be published in the agenda packet the Friday before the meeting.

The draft resolution of denial was included for the Commission's consideration in the event they did not want to grant reconsideration of the project. It was written by Director Swiecki and myself. As both Director Swiecki and I described during the May 14th hearing, the draft resolution of denial "Whereas" clauses acknowledged the breadth of the Commission's conversation leading up to their vote intending to deny the project. That conversation included concerns with hydrology, which are not part of the findings used by the Commission in acting on a grading project. While that was part of the Commission's discussion, that does not mean that the written findings (contained in Exhibit A to the draft resolution) could reference unknown hydrology impacts as a means to deny the project.

As was stated during the May 14th hearing, the Commission has requested that the applicant voluntarily provide technical studies such as a soils report and hydrology report at the next public hearing. By all accounts the applicant wishes to cooperate with the Commission's request, but such information would be provided voluntarily as supplemental information.

Your comments below will be provided to the Commission as written correspondence and included in the public record for the project.

JULIA C. AYRES

Senior Planner, Community Development Department
City of Brisbane | 50 Park Place, Brisbane, CA, 94005
Desk: (415) 508-2129 | Cell: (415) 519-0165
Email: jayres@brisbaneca.org

From: Prem Lall <premlall@yahoo.com>
Sent: Wednesday, May 27, 2020 4:58 PM
To: Breault, Randy <rbreault@ci.brisbane.ca.us>; Ayres, Julia <jayres@ci.brisbane.ca.us>
Cc: Schumann, Michael [REDACTED]; Nancy Roeser <[REDACTED]>; Adrian DeCastro [REDACTED]; Dean DeCastro <[REDACTED]>; Patricia Flores <[REDACTED]>; Swiecki, John <johnswiecki@ci.brisbane.ca.us>
Subject: Re: Soils report for 338 Kings project requested

Hello Julia,

I did not see the revised plan referenced in Mr. Zavala's 3/10/2020 letter: "I am requesting consideration of the proposed denial of the application for the property that is the subject of this letter. We filed revised plans, which address concerns regarding the tree impact and driveway width." This letter was included in the Agenda Packet PDF for the 5/14/2020 Planning Commission meeting.

All of Mr. Zavala's architectural/engineering sketches distributed in the Agenda Packet PDF for the 5/14/2020 Planning Commission meeting are dated 2019, not 2020.

Also, the Draft Denial which you and Mr. John Swiecki introduced to the Planning Commission contained the following WHEREAS clause:

"WHEREAS, the Planning Commission closed the public hearing and came to a consensus to deny the project based on its impacts to mature street trees in the vicinity of the project, potential hydrology impacts, and changes to the public right-of-way, and deferred adoption of findings of denial to the next regular Planning Commission meeting"...Grading Permit review EX-4-19 is denied without prejudice, and City Engineer issuance of the grading permit as proposed is not recommended.

If you don't mind my asking, who prepared this WHEREAS clause? Did you and Mr. Swiecki prepare it, or did City Attorney Tom McMorrow prepare it? Or was it someone else?

I ask because the clause specifically mentions that the Planning Commission had considered "potential hydrology impacts" with regard to the 338 Kings grading project, but at the 5/14/2020 meeting you indicated that hydrology had not been considered and that you didn't know how that clause got into the draft denial. Now that you have had almost two weeks to determine how that clause got into the denial and who inserted it, I would appreciate an explanation.

The video of the Planning Commission meeting of 5/14 includes the following statement from you:

"The Planning Commission's...the breadth of the review that you guys have when you're reviewing a grading project...we do not have a mechanism to require hydrological studies or geotechnical studies for your review...typically not something that applicants submit or that the municipal code requires as part of the Commission's review for grading. So the applicant has revised the application regarding the trees, which are specifically part of the findings that you all use when you are evaluating grading projects, that's called out: is the project impacting street trees. The findings for approval of a project or recommending approval do not extend to hydrology or geotechnical feasibility."

Mr. Swiecki then requested a two-minute recess to "discuss a potential technical difficulty" with the meeting and then turned off all of the microphones so that the online attendees including myself and perhaps a handful of other people could not hear the discussion that pursued, which involved you, Mr. Swiecki, and several members of the Planning Commission, among others.

You later stated "Should the Commission wish to impose conditions on their permit for the City Engineer to consider, of course that would be part of the City Engineer's review process and any grading permit that's submitted to the City Engineer is publicly available to review. That data again isn't something we would normally require from someone for Planning Commission review and approval. But it is something that you can make a condition of approval that the City Engineer ensure that the hydrology reports demonstrate there will be no negative impact on the surrounding neighborhood."

At about 29:00 in the video, commissioner Sandip Patel asks whether the Planning Commission will be able to consider hydrology if the information is provided, and Mr. Swiecki responds, "They can certainly provide it. Again, it won't be a matter open for...informational only...again it won't enter into the deliberations or the findings but as information if it's available, that's fine."

So which is correct, that the Planning Commission can require the submission of hydrology reports or that the Planning Commission can only consider hydrology reports *IF* the applicant decides to provide them, and even in that case cannot include their analysis of the hydrology report in their consideration of approving or denying the grading permit?

ATTACHMENT 6-K

If the Planning Commission cannot consider hydrology reports for a grading project involving less than 10 cubic yards of soil in approving or denying a permit, I can understand that.

But to deny the Planning Commission the opportunity to consider hydrology reports for a project requesting the removal of 391 cubic yards of soil would be nothing short of incompetent on the part of the City of Brisbane...and quite possibly even negligent considering that 391 cubic yards of soil by my estimate can absorb up to 42,826 gallons of water during heavy rainfall, if not more, and that there must be consideration of what will happen to that water once the 391 cubic yards of soil is removed, since it will flow down the mountainside to the two houses across the street from 339 Kings (namely, 338 and 339 Kings) as well as the four houses down slope on Humboldt (namely, 738, 740, 760, and 764 Humboldt).

If a professional hydrologist and civil engineer informed you that choosing to refuse to include the consideration of hydrology in the Planning Commission's decision-making process with regard to the 338 Kings grading project would be an extremely unwise decision, would you heed his advice?

And in order for hydrology to be fully considered, the soils report(s) must be made available to the public.

Implying that the Planning Commission should make its decision on approval or denial of this project without the soils report to evaluate hydrology would make no sense from a legal perspective.

Thank you.

Prem Lall
Brisbane resident

On Wednesday, May 27, 2020, 2:53:52 PM PDT, Ayres, Julia <jayres@ci.brisbane.ca.us> wrote:

Hello Prem,

The Planning Commission will be considering the revised grading proposal at 338 Kings Road at a future public hearing (likely in June; specific meeting date not yet determined). Because the Commission hasn't taken final action on their review, the applicant hasn't applied for a grading permit from the City Engineer, so Randy does not have an application or any supporting materials like a soils report to give you. It's still at the Planning Commission level.

The Commission has requested that the applicant voluntarily provide technical documentation such as soils reports at the next hearing. You and any other property owner within 300 feet of the property will receive a mailed notice 10 days before the hearing. The public will be able to access the staff report and applicant's materials on the City's website the Friday before the hearing.

If you have any other questions on the status of the Planning Commission's review or procedures, please let me know and I'll do my best to help.

Best,

Julia

JULIA C. AYRES

Senior Planner, Community Development Department

City of Brisbane | 50 Park Place, Brisbane, CA, 94005

Desk: (415) 508-2129 | Cell: (415) 519-0165

Email: jayres@brisbaneca.org

From: Prem Lall <premlall@yahoo.com>

Sent: Wednesday, May 27, 2020 1:28 PM

To: Breault, Randy <rbreault@ci.brisbane.ca.us>; Ayres, Julia <jayres@ci.brisbane.ca.us>

Cc: Schumann, Michael <[REDACTED]>; Nancy Roeser <[REDACTED]>; Adrian DeCastro <[REDACTED]>; Dean DeCastro <[REDACTED]>; Patricia Flores <[REDACTED]>

Subject: Soils report for 338 Kings project requested

Hello Randy and Julia,

I hope you're both holding up well during the COVID-19 lockdown.

I would like to see the soils report submitted for the grading project at 338 Kings Road.

Since City Hall is closed due to the lockdown and I cannot come in to see the report in person, I request a copy by email.

[Grading Review EX-4-19; 338 Kings Road;R-1 Residential District; Grading Review for approximately 330 cubic yards of soil cut and export to accommodate a new driveway, attached garage, and additions for an existing single-family dwelling on a 6,400 square-foot lot with a 43% slope; Abraham Zavala, applicant; Huang John & Chen JoyTrust, owner]

Thank you.

Prem Lall
Brisbane resident