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RESOLUTION NO. 2020-53

A RESOLUTION OF THE BRISBANE CITY COUNCIL
UPHOLDING THE APPEAL OF THE PROPERTY OWNERS OF 338 KINGS ROAD
AND CONDITIONALLY APPROVING GRADING PERMIT 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 on behalf of the property owners 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 would 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 indicated its intent to deny the application based on the impacts to mature street trees in the vicinity of the project, potential hydrology impacts, and changes to the public right-of-way, but deferred adoption of findings of denial to the next regular Planning Commission meeting; and

WHEREAS, on March 10, 2020, the applicant submitted a written request to the Planning Commission to reconsider its intended denial of the application due to revisions to the project plans and work scope to address many of the concerns voiced by the Planning Commission at its February 27, 2020 meeting; and

WHEREAS, due to the San Mateo County Health Officer's Shelter in Place Order in effect as of March 16, 2020 (since rescinded under Order c19-11 on June 17, 2020), the Planning Commission cancelled all scheduled meetings in March and April of 2020; and

WHEREAS, at the next regular meeting of May 14, 2020, held virtually via teleconference in compliance with the Governor's Order N-29-20, the Planning Commission considered the applicant's request for reconsideration of a revised application and voted unanimously to grant the request and schedule the application for review at a future public hearing; and

WHEREAS, on June 25, 2020, the Planning Commission conducted a hearing of the revised 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

ATTACHMENT 1

WHEREAS, at the public hearing of June 25, 2020, the Planning Commission of the City of Brisbane denied the application pursuant to the findings of denial in Resolution EX-4-19;

WHEREAS, John Huang and Joy Chen, trustees of the John Huang and Joy Chen Trust, property owners, submitted a timely appeal of the Planning Commission's denial to the City Council pursuant to Chapter 17.52 of the Brisbane Municipal Code;

WHEREAS, on September 3, 2020, the Brisbane City Council conducted a hearing on 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;

WHEREAS, the City Council reviewed and considered the staff memorandum relating to said application, the Planning Commission record on the application, and the written and oral evidence presented to the City Council in support of and in opposition to the application; and

WHEREAS, the City Council makes the findings set forth in Exhibit A to this Resolution; and

WHEREAS, the City Council further 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

NOW THEREFORE, the City Council of the City of Brisbane resolves as follows:

Section 1. Based on the findings in Exhibit A to this Resolution, the appeal of the property owners is granted, and the application (Grading Permit EX 4-19) is conditionally approved, subject to the conditions of approval attached to this Resolution as Exhibit B.

Section 2. This Resolution shall take effect immediately upon its adoption.

Terry O'Connell
Mayor

I hereby certify that the foregoing Resolution No. 2020-53 was duly and regularly adopted at the regular meeting of the Brisbane City Council on September 3, 2020 by the following vote:

AYES:
NOES:
ABSENT:

Ingrid Padilla
City Clerk

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EXHIBIT A**

Findings of Approval:

Grading Permit EX-4-19

- As evidenced by the applicant's grading plan and site plan, the proposed excavation is limited to the footprint of the additions, required driveway widening, and pedestrian access stairway to allow access to the house from the street. The grading plan design would allow the new building 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 conform to the parking requirements of the R-1 Residential District and to the driveway design standards contained in Chapter 17.34 of the Municipal Code. 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 would result in one exposed retaining wall of approximately eight feet in height within a portion of the front setback, extending into the public right-of-way, in conjunction with a new on-grade stairway to provide access from the street to the main dwelling. With the conditions of approval, the visual impact of this wall would be minimized with 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 applicant's grading plan is designed to conserve existing street trees and does not propose removal of any trees on the property. Per the conditions of approval contained in Exhibit B, the City Engineer will require specified tree protection measures during construction and will require a tree assessment report prepared by a City Engineer-approved arborist prior to and regularly up to three years post-construction to ensure the trees' preservation.
- The subject property is not located within the boundaries of the San Bruno Mountain Area Habitat Conservation Plan.

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EXHIBIT B

Conditions of Approval:

Grading Permit EX-4-19

Prior to Issuance of a Building Permit

- A. The applicant shall obtain a building permit and a grading permit prior to proceeding with construction. The project plans shall comply with all development standards of the R-1 District and current adopted Building and Fire Codes, and shall include shoring plans.
- B. Plans submitted for the building and grading permits shall substantially conform to plans on file in this application EX-4-19 in the City of Brisbane Planning Department, with the following modifications:
 1. A landscape plan shall be submitted demonstrating compliance with the requirements of Brisbane Municipal Code §17.06.040.I, to the satisfaction of the Planning Director. The plan shall incorporate water-conserving, non-invasive landscaping to comply with the minimum front yard landscaping requirements.
 2. All exposed retaining walls exceeding six feet in exposed height from grade shall be either planted with screening plantings such that no more than six (6) feet of the height of the retaining wall will remain visible, or by incorporating varying treatment and materials at six foot horizontal intervals into the wall design. The chosen screening method shall be subject to review and approval by the Community Development Director.
 3. Plans submitted for grading permit review shall be subject to standard review procedures by the Department of Public Works.
 4. Plans submitted for grading permit review shall be subject to the following conditions of approval:
 - i. During construction, the adjacent 28 inch Coast live oak street tree's critical root zone within the project boundaries shall be protected by a Type III Tree Protection Zone (TPZ), with a protected zone of 10 x the diameter breadth height of 28" (i.e., 280" [23']).
 - ii. No grading or construction shall occur within the TPZ, unless an arborist approved by the City Engineer is onsite during such work. Storage of materials shall not be allowed within the TPZ at any time.
 - iii. The applicant shall hire an arborist to be approved by the City Engineer for completion of a tree assessment report prior to construction, at the end of construction, 1 year after completion of construction, and 3 years after completion of construction.
 - iv. The applicant shall post a bond in the face value of \$25,000, which shall be called if at any time up to the City Engineer's approval of the 3-year tree assessment report, the tree is deemed by the City Engineer to be no longer suitable for preservation.

ATTACHMENT 1

- C. Prior to issuance of a building permit, the applicant shall obtain an encroachment permit from the Department of Public Works for all proposed construction activity and private improvements within the public right-of-way.
- D. Prior to issuance of a building permit, the property owner shall enter into a standard landscape maintenance agreement with the City.

General Conditions

- E. Pruning of the adjacent 28 inch Coast live oak street tree shall require prior approval by the City Engineer, and approved pruning activity shall conform to the City Engineer's requirements.
- F. Water and sanitary sewer service and storm drainage details shall be subject to approval by the City Engineer.
- G. Drawings depicting all work completed and proposed shall be provided to the satisfaction of the City. Exposure of covered work may also be required to demonstrate compliance with building code requirements.
- H. The permittees agree to indemnify, defend and hold the City and its officers, officials, boards, commissions, employees and volunteers harmless from and against any claim, action or proceeding brought by any third party to attack, set aside modify or annul the approval, permit or other entitlement given to the applicant, or any of the proceedings, acts, or determinations taken, done or made prior to the granting of such approval, permit, or entitlement.
- I. Minor modifications may be approved by the Planning Director in conformance with all requirements of the Municipal Code.