



Date Submitted: _____
Fee: _____
Receipt No.: _____

A P P E A L

I/We hereby appeal the action by the:

- Planning Commission
- Zoning Administrator
- Planning Director

regarding Application No. EX-4-19
John Huang and Joy Chen Trust, Owner
for _____
338 Kings Road
at _____.

The reasons for the appeal are: _____

The Planning Commission had made an incorrect conclusion and denied our grading permit application on June 25, 2020 for the addition of a two-car garage with an ADU above.

We are preserving an oak tree located across the street and below the excavation site. However, without any evidence, the Planning Commission cited the excavation "*conflicts with the trees root system due to excavation and trenching for underground drainage during construction*". It is in direct conflict with the Planning Department's recommendation as the condition of approval "*that the City Engineer consider requiring an arborist report to evaluate the project's potential impact to the long term health of adjacent street trees*". Without consulting an arborist or any expert on this subject matter, the Planning erroneously concluded that our project will cause the death of the tree and therefore denied our grading permit. Furthermore, the "proximity of the trees to cars exiting the proposed garage" was also erroneously cited as the other reason for denial when our design complies to the existing regulations, and the cars exiting would not be backed into the tree anyway.

Therefore, we are appealing to the City Council and call on members of the Council to reverse the ill-considered decision made by the Planning Commission. We look forward to your approval of our application prepared with numerous accredited experts in their fields of specialty, and properly reviewed by City Engineer in accordance and in compliance to all the laws and regulations of the City.

John Huang and Joy Chen Trust, Owner

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650-245-6824

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Mailing Address: _____
huangjohnw@outlook.com

Email Address: _____

Signature(s):  _____
July 7, 2020

Date: _____

August 25, 2020

From:

John Huang and Joy Chen
Resident of 338 Kings Road

To:

Brisbane City Council

RE: Appeal on Grading Permit Application No. EX-4-19

Statement from the Owner of 338 Kings

My wife Joy and I bought this house in December 2018 but we are still renting and have not moved in as of today. Since Kings Road is very tight and dangerous for our daughters getting in and out of cars on daily basis if parked off the street, we thought it is imperative to build a garage before moving in. Besides improving the overall appeal of the city and increase the real estate value of Brisbane, the project will also enhance the parking situation for residents on Kings since our section is not only one of the tightest in Brisbane, but also has the fewest street parking available. Therefore, the neighbors in our section are excited about our project as we will be taking 2 cars off the street and even create a third spot (using our land) for guests and neighbors. More importantly, the improvement with the added foundation, drainage system, retainer walls, and even pillars will improve soil stability for this house on the hill. However, we did not expect the review process by the Planning Commission would be this unreasonable with ludicrous demands that we left the hearings feeling perplexed and wondering about the nonsensical and irrational decision process of the Commission.

During our initial hearing on February 27, 2020, the Planning Commission denied our application based on their unfounded claim that our excavation of only 357 cubic yards (equivalent to 7.1 yards x 7.1 yards x 7.1 yards) will cause significant "hydrology impacts". Hydrology should not have been part of the grading review as it is not in the purview of the Commissioners which the Planning Department has repeatedly reminded them. However, the Commissioners still expected us to "voluntarily" hire a hydrologist to produce a hydrology report, which the City Engineer and our architect thought would serve no purpose. Indeed, two of the most reputable hydrologists in the Bay Area that were interviewed by us stated that since the project is only about constructing a two-car garage under an existing deck, it is not altering any streams or impacting water tables nor affecting ecological systems in any way, a hydrological or hydrodynamic report on this matter would not yield valuable information. They questioned the professionalism of the City, and indicated that the issue should be about the storm water run-off design, which we will address by following all the requirements adopted by the City's engineering department in subsequent

filings anyway. Nevertheless, in order to satisfy such unreasonable demand by the Commissioners, we pushed our architect to produce drainage design before it is required by the City, and we also hired a geotechnical engineer to conduct soil stability review and assess the excavation impact in order to produce a report. This pointless study costed us thousands of dollars only to affirm the findings in our soil report that the project is both "feasible and safe" with standard techniques and common practices applied. We even hired the geotechnical engineer to join the subsequent live hearing, during when the geotechnical engineer disputed the Commissioners and stated our project with the new foundations and improvements, "will actually improve soil stability and prevent sliding, not the other way around" as the Commissioners without any civil engineering expertise so injudiciously thought and denied our application previously. Even with a thorough study and a presentation by the geotechnical engineer, one Commissioners stated that he still does "not feel it is safe" while being acknowledged and agreed to by other Commissioners. The geotechnical engineer who is licensed by the State with over 15 years of professional experience including similar works in Brisbane was in shock and left the hearing speechless.

Besides conducting futile exercise of hydrological study, we have no choice but to make senseless changes to our existing plan to satisfy the demands of the Commissioners in order for them to reconsider our grading review. However, the Planning Commission at its meeting of June 25th, 2020 again denied our application regarding to a tree nearby. A resolution with findings of denial was adopted, however, the findings grossly ignored the recommendations by the planning staff, and were made impulsively again without expert inputs from professionals. The commissioners inappropriately acted as both lawmakers and subject experts again when reviewing our application. We respectfully ask the City Council to reverse the erroneous decision made by the Planning Commission and approve our permit request.

During the grading permit hearing, the City Engineer recommended approval for our application with the condition that an arborist is hired to "evaluate the project's potential impact to the long term health of this street tree".

However, during the hearing, the Commissioners claimed without any expert input from an arborist that our grading plan (1) "conflicts with the trees root system due to excavation and trenching for underground drainage during construction". The Commissioners further disregarded the clearance distance determined by City Engineer and self-declared that (2) "the proximity of the trees to cars exiting the proposed garage" as the reason for the denial.

(1) Tree Preservation

The Commission should have requested an "arborist report to evaluate the project's potential impact to the long term health of this street tree" as recommended by the City Engineer instead of just acting as the expert in dendrology and denied our application without any scientific basis.

(2) Clearance

Our architect developed the construction plan according to and in coordination with the City Engineer to ensure that cars can freely enter and exit the garage while in consideration of the safety of any structures and objects around the garage and along the street, including the tree under discussion. Given the setting and the planned traffic flow, they have determined that there is sufficient room for exiting the car as the shortest distance between the tree and the garage is at least 18 feet. Furthermore, our architect has been in consultation with the City Engineer to ensure our plan is feasible and complies to all City Codes and regulations.

However, without referencing to any existing code or regulation, the Commission arbitrarily cited "the proximity of the trees to cars exiting the proposed garage" as another reason for denial. Similar to our neighbor, we will turn as we back down the street to Kings. Therefore, there will be plenty of space for us to exit the garage.

The safe distance for exiting garage is determined by the architect and the City Engineer given the plan, its setting, and the topography. The Commissioners should **not** act as the engineer and arbitrarily decide on what the clearance should be.