



## MEMORANDUM

DATE: July 10, 2025  
TO: Planning Commission  
FROM: Ken Johnson, Senior Planner  
SUBJECT: Item Initiated by the Planning Commission – Minor Modifications of Single-family Homes at the Northeast Ridge

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### BACKGROUND

The Northeast Ridge (NER) is a planned development and is located within the San Bruno Mountain Habitat Conservation Plan (HCP) area. It was approved for development through the City's approval of planned development, design and vesting tentative map permits. It consists of 499 housing units, developed from the 1990's to 2015. There are three areas of the NER, each developed as common interest developments, with a home-owners association (HOA) for each. The final phase of development was the single-family homes at "Landmark at the Ridge", which totaled 88 units. The other two areas are town-home style condominiums of "Viewpoint at the Ridge" and stacked flats at "Altamar at the Ridge". The area where applications for minor modifications have been filed are within the Landmark area.

A Brisbane resident has raised concerns about the Zoning Administrator's approval of minor modifications to the Northeast Ridge design, most recently during oral communications at the Planning Commission's meeting of April 10, 2025. These concerns appear to stem from the Zoning Administrator's approvals of applications for certain "U" shaped homes to enclose the interior courtyards, the area inside the U, adding floor area to the homes. The assertion has been made that the Declaration of Covenants, Conditions and Restrictions (CC&R's) do not allow for expansion of the homes and that such additions alter the stormwater flow, such that it creates hazardous soil conditions. She's also indicated her concern about potential impacts to the endangered butterfly species in the area.

The Commission then requested that staff include this matter on their agenda under Items Initiated by the Commission.

### DISCUSSION

Minor Modification Review Authority: Minor modification approvals to design permits by the Zoning Administrator are permitted per BMC Section 17.42.070.A. Additionally, per BMC Section 17.28.120, the Planning Commission or the Zoning Administrator shall have authority to approve any items which, under the terms of the PD permit, have been specifically delegated to either of them for approval, either as a condition for issuance of the permit or at any time thereafter. Likewise, the authority of the Zoning Administrator (a role filled by the Planning Director) to approve minor modifications is provided in the conditions of approval for the Northeast Ridge development. As stated in the "Northeast Ridge Project Vesting Tentative Map Conditions of Approval", Planning & Building Condition of Approval I.j *"Minor modifications in any of the approved plans may be approved by the Planning Director..."*

Permit History: Dating back to 2007, three applications have been approved for expansion of the floor area for U-shaped homes and one for covering part of a patio. The first was for infill of the U –shaped house at 10 Huckleberry Ct and it was appealed by a Brisbane resident. The Zoning Administrator’s decision to approve the proposed infill of the home was upheld by the Planning Commission. The subsequent applications, for 56 Golden Aster Ct, 77 Golden Aster Ct and 80 Lily Court were approved by the Zoning Administrator in 2010, 2023 and 2024, respectively, and no appeal was filed for these three permits.

A copy of the report to the Planning Commission for 10 Huckleberry Ct is provided in the attachments. Although the owner of this property did not ultimately build the proposed addition, the report details the facts of the case. Additionally, the minutes provide a summary of the Planning Commission’s discussion prior to upholding the Zoning Administrator’s decision.

There are a few key items to note from the 10 Huckleberry case. These same items apply to all four of the applications:

- Regarding the Northeast Ridge development being located within the HCP, all four of the modification applications were on already developed sites, with no expansion beyond the property boundary and therefore would have no impact to adjacent conserved HCP habitat.
- Minor modifications are permitted at the Northeast Ridge as further described in the attached 2007 agenda report.
- The CC&Rs do not prohibit the expansion of floor area and while the HOA has authority for enforcing the CC&Rs, the City also reviews the CC&Rs in conjunction with permit applications, to ensure compliance. Proof of HOA approval was provided to the City for each application prior to minor modification approval.
- Regarding stormwater flow, the applications were reviewed by the Director of Public Works/City Engineer and no objections were raised.

#### ATTACHMENTS

- A. Planning Commission Agenda Report on Appeal of 10 Huckleberry Ct, dated December 13, 2007
- B. Planning Commission Minutes of December 13, 2007
- C. Landmark at the Ridge CC&Rs


  
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Ken Johnson, Senior Planner

  
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John Swiecki, Community Development Director

# ***City of Brisbane***

## ***Planning Commission Agenda Report***

**TO:** Planning Commission

**FROM:** William Prince, Community Development Director 

**DATE:** Meeting of December 13, 2007

**SUBJECT:** Appeal of Planning Administrator Decision for 10 Huckleberry Court

**RECOMMENDATION:**

Deny appeal and uphold the Zoning Administrator's decision.

**BACKGROUND:**

The attached staff report to the Zoning Administrator, from the Associate Planner, explains the details of the request for approval of a Minor Modification to the Design Permit, for a residence at 10 Huckleberry Court, on the Northeast Ridge. As the report indicates, the project includes the enclosure of an existing 195 square foot deck (surrounded by two wings of the house) and the addition of a new 156 square foot deck, at the rear of the structure. The property owners, Jess and Yolanda Aquino, hired the services of Scott Weiss, Architect, to design the changes. A minor modification to the design permit was necessary and the Zoning Administrator approved with the request with appropriate conditions and required findings on September 11, 2007.

Pursuant to the Brisbane Municipal Code (BMC Section 17.42.070A) the Planning Director (Community Development Director) is authorized to grant minor modifications such as that requested by the applicants, in this case. According to the City Attorney this section has been in the BMC since, at least, 1984.

At the public hearing, the appellant made various claims that are not substantiated by the record including: that the Community Development Director had no authority to approve the request, that the conditions of approval for the NER project prohibited any changes to the residences, that the CC&R's prohibited such changes and that the project would be detrimental to the HCP.

**ANALYSIS**

As cited above, the Brisbane Municipal Code provides that the Community Development Director (aka Planning Director) can act in the capacity of a Zoning Administrator. Section 17.56.010 states that, "There is created the function of the zoning administrator which shall be carried out by the planning director." Section 17.56.020 of the BMU states that, "The Zoning

Administrator shall have all the powers and duties of a board of zoning administration as set forth in Section 65900 through 65909 of the Government Code.” Additional sections of the BMC go on to describe the responsibilities of the zoning administrator to act on applications, to report decisions to the planning commission, as well as the procedure and findings to be followed when making decisions on both variances or minor modifications. As an alternative, the code also provides that the Zoning Administrator may refer any application to the Planning Commission without holding a hearing or making a decision. Typically, variances in Brisbane have been referred to the Planning Commission, although the ordinance does provide for approval by the Planning Director, acting as the Zoning Administrator.

The establishment of a Zoning Administrator position and the delegation of authority to such a position for routine minor permit requests is a common practice, in jurisdictions throughout the state. The provision in the government code for this delegation of authority allows for greater efficiency in the administration of minor planning applications and provides greater time for the Planning Commission to deal with more significant matters.

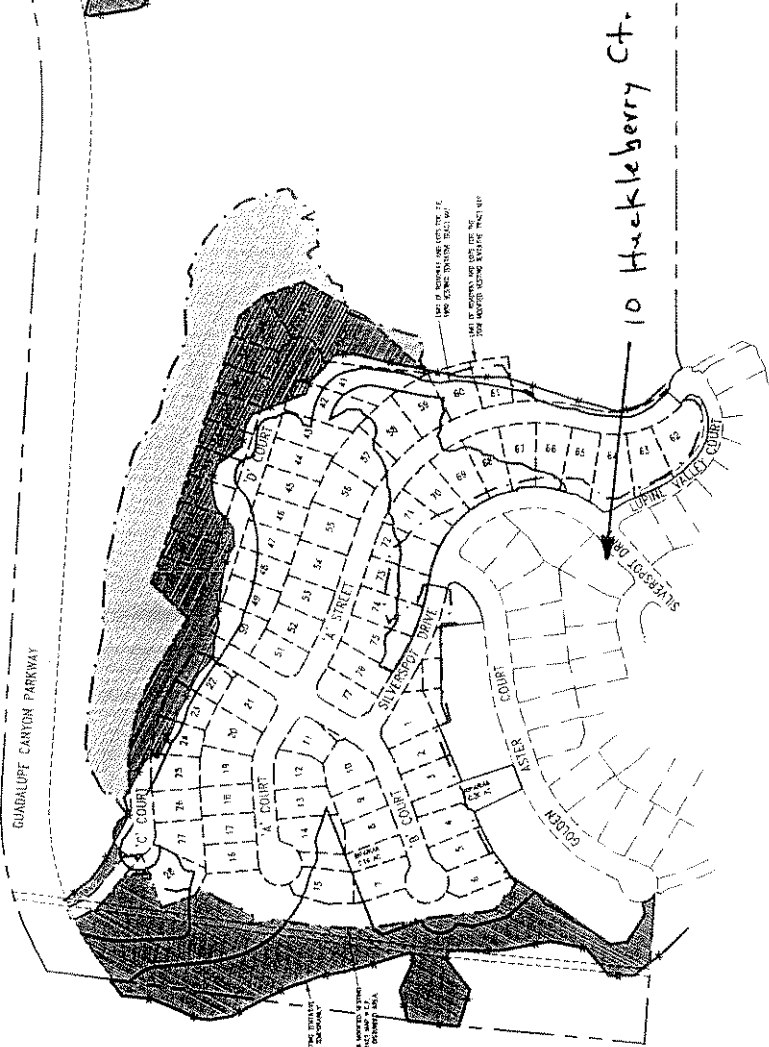
Condition C,I,j of the 1989 final conditions for the Northeast Ridge Project specifically delegates authority to the Planning Director to approve Minor Modifications for the project. While there is a concern that any approvals be in compliance with the HCP, the subject property is not contiguous with the HCP boundary and the proposed improvements are well within the confines of the lot, so there could be no possible impact on the HCP. The condition was not meant to prevent property owners from the reasonable enjoyment of their property by adding deck additions to the back yard. The creation of the new covered floor area (dining room) is more of an infill of the existing footprint than an expansion of the footprint. The architectural design is consistent with the existing design and represents only a minor change to the look of the rear elevation.

As a matter of standard practice, the CC&R's for projects like the NER are reviewed and approved by the City (upon review by the City Attorney and other staff). This ensures, among other things that the CC&R's do not conflict with the City's conditions. However, CC&R's are private deed restrictions agreed to by the buyers of property in common interest subdivision or planned developments. Because CC&R's are private deed restrictions, their enforcement is primarily a matter of civil law between property owners. For the most part, it would not be an appropriate use of public funds for local government to enforce these private deed restrictions, however, most local governments try to avoid actions that would be in conflict with them, if they are aware of a conflict. In this case, staff required a letter from the Architectural Review Board of the Homeowner's Association approving the proposed architectural changes, as part of the application submittal.

A review of the CC&R's does not indicate said architectural changes or land use modifications are prohibited. In fact, one of the very purposes of an architectural review by the HOA is to allow the consideration of such changes.

The appeal is without merit.

H.2.2



# 2006 MODIFIED VESTING TENTATIVE TRACT MAP COMPARISON TO 1989 VESTING TENTATIVE TRACT MAP **NORTHEAST RIDGE** LANDMARK AT THE RIDGE UNIT II - NEIGHBORHOODS 1 AND 2 CITY OF BRISBANE SAN MATEO COUNTY CALIFORNIA

**LEGEND**

|     |   |           |  |
|-----|---|-----------|--|
| --- | BKF '89 PLAN (OUTER BOUNDARY OF TEMPORARILY DISTURBED AREA) |           |  |
| --- | CBG '96 PLAN (OUTER BOUNDARY OF TEMPORARILY DISTURBED AREA) |           |  |
| --- | BKF '89 PLAN (ROADWAY AND LOTS)                             |           |  |
| --- | CBG '96 PLAN (ROADWAY AND LOTS)                             |           |  |
|     | INCREASED TEMPORARILY DISTURBED AREA:                       | 3.80± AC  |  |
|     | INCREASED PERMANENT DEVELOPMENT AREA:                       | 2.98± AC  |  |
|     | TOTAL INCREASED DEVELOPMENT AREA:                           | 6.78± AC  |  |
|     | DECREASED PERMANENT AND TEMPORARILY DISTURBED AREA:         | 24.84± AC |  |
|     | NET DECREASE IN DISTURBED AREA                              | 18.06± AC |  |

Carlson, Bortone & Gibson, Inc.  
1111 North Main Street, Suite 100, San Mateo, CA 94401  
TEL: (650) 351-1111 FAX: (650) 351-1112  
WWW.CBGI.COM

1

OF 1 SHEETS

0' 100' 200' 300' 400'

SCALE: 1" = 100'

DATE: JUNE 1, 2006

JOB NO.: 776-30

# THE ZEPHYRUS

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11-10-04

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## A1.0

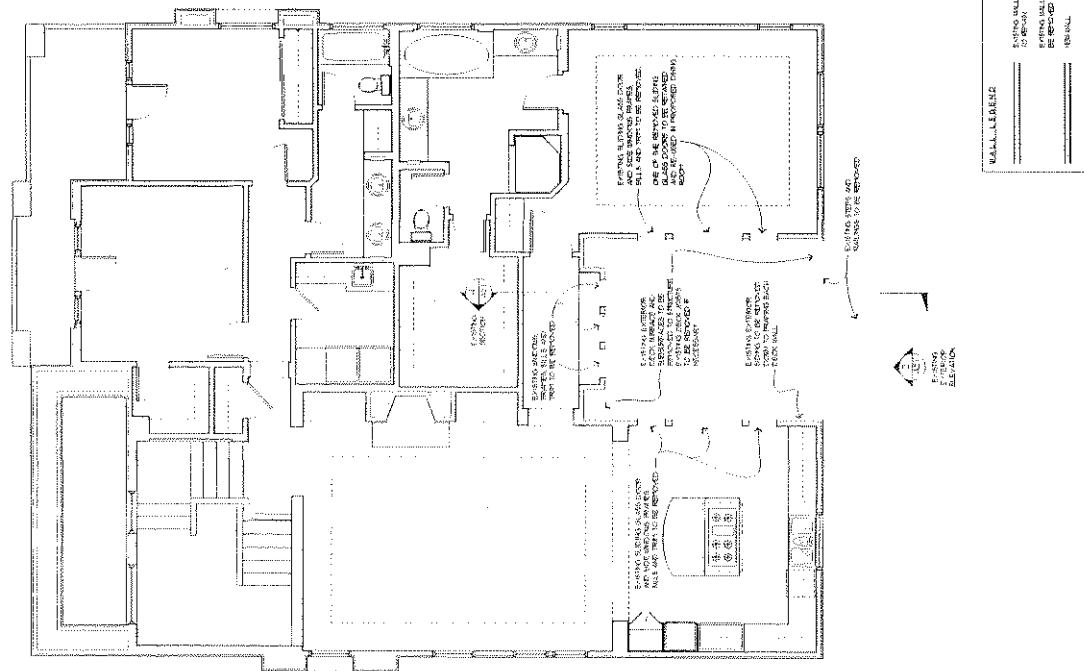
*Signature*

Staff Note:  
Revised Deck to confer and include step down on outside edges; after 9/11/07 zoning Administrator meeting. By applicant.

H.2.4

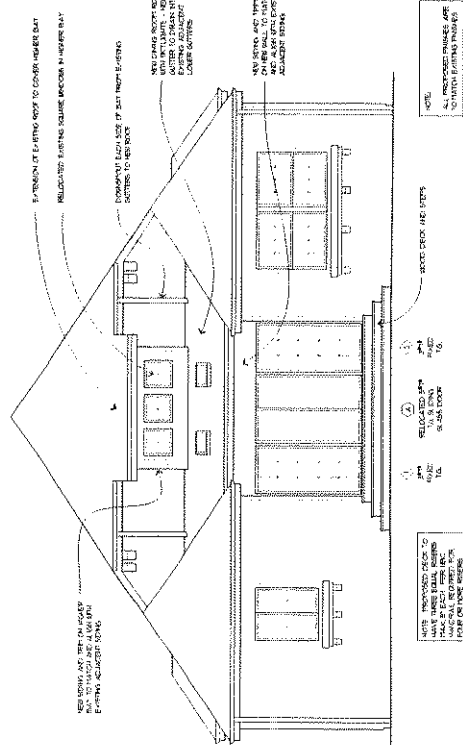
NOTES  
PROPOSED

*[Faint circular stamp]*

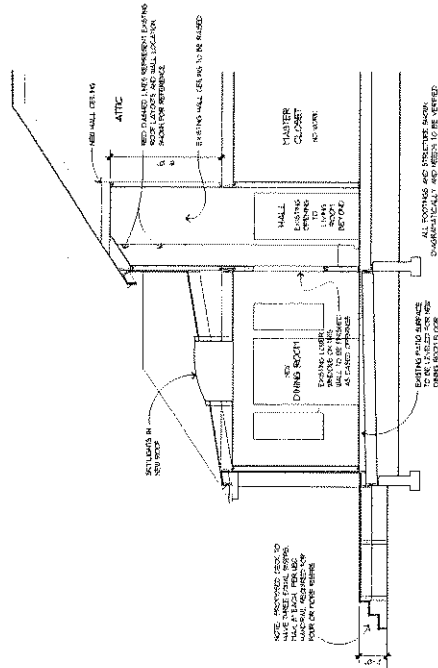


# EXISTING MAIN LEVEL LOCAL PLAN

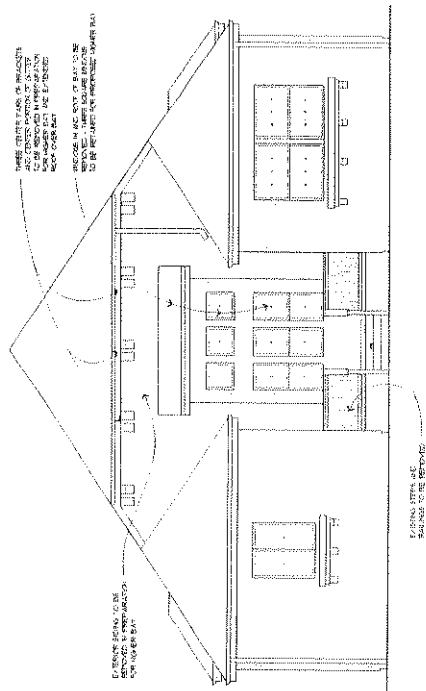
H. 2.5



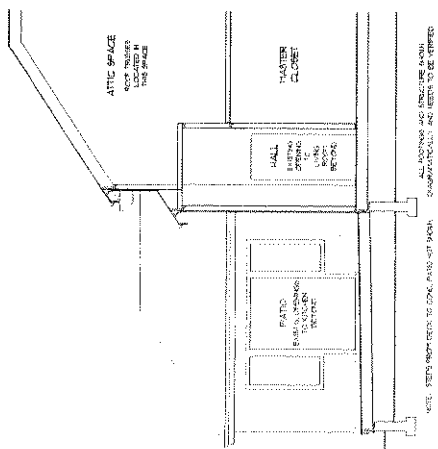
SECRET



3. PROPOSED SECTION THROUGH NEW TRUSS ROOF AND RAISED BALCONY



EXISTING BACK ELECTRON



4  
EXISTING SECTION  
11' 0" BACK DECK AND LOWER SHEDD



Commissioner Maturo expressed support for the changes. She said she favored the previous proposal and was pleased to see the improvements.

Chairman Hunter thanked the applicant for providing a mock-up of the signs to give the Commission a better sense of how they would look. He noted the staff report refers to balancing the small building's need for visibility against the community's desire for an attractive entry to Central Brisbane. He agreed that the proposed landscaping would be a definite improvement. For the future, he suggested considering this prominent site for a community monument sign.

Commissioner Lentz said he liked the existing gray background better than white, and he proposed exploring B of A's willingness to keep some of the existing signage.

Mr. Alsop noted it might be possible to shift some of the signs back to create space for a city sign. He advised that the bank would probably not undertake the landscaping if the City insists on keeping the gray signs. The Commission discussed potential configurations to accommodate a community sign.

Commissioner Maturo said she would prefer moving the B of A sign north and creating an attractive entry sign.

Community Development Director Prince suggested continuing the matter to the next meeting to allow time for the applicant to check with the Bank of America regarding these possibilities.

Commissioner Jameel moved to continue this matter to the meeting of January 10, 2008. The motion was seconded by Commissioner Lentz and unanimously approved.

At 11:27 p.m., the Commission agreed to continue the meeting until 11:45 p.m.

2. **PUBLIC HEARING: 10 Huckleberry Court;** Minor Modification MM-1-07; appeal of the Zoning Administrator's Conditional Approval of Minor Modification to the Design Permit for enclosure of existing rear deck to add dining room and addition of new rear deck; Scott Weiss, applicant; Jess & Yolanda Aquino, owners; Linda Salmon, appellant; APN 005-401-570

Commissioner Maturo recused herself from participating in the discussion or voting on this item and departed from the dais.

Community Development Director Prince said this project involved enclosure of a small deck surrounded by two wings of the house and addition of another small deck at the rear of the structure. He noted that the applicant applied for a minor modification to the design permit for the Landmark neighborhood, which was

approved by the City's Zoning Administrator. At that public hearing, he said, the appellant, Linda Salmon, made various unsubstantiated claims and challenged the City's authority to approve the modification.

Director Prince explained that Brisbane's Municipal Code allows the Community Development Director to act in the capacity of Zoning Administrator to make decisions on routine, minor requests, a common practice throughout California and one which has been in effect in Brisbane for twenty years. He said the conditions of the Northeast Ridge project specifically delegate authority to the Zoning Administrator to make routine decisions. In this case, he noted, the new covered floor area is more an infill of an existing building footprint than an expansion. He reported that staff obtained a letter from the architectural review board of the homeowners association approving the proposed changes.

Chairman Hunter asked if any other owners of this model had requested similar modifications. Community Development Director Prince replied that he was aware of one other modification request at Landmark, pertaining to attic space, over the past five years. He said there may have been changes to windows as well.

Yolanda Aquino, owner, introduced her husband Jess. She said this modification is needed to provide more space and privacy for her family. She noted she has been working with the architect for more than a year, and she requested City approval.

Chairman Hunter asked how many other homes of her model were in the development. Ms. Aquino identified four in her neighborhood.

Dana Dillworth asked that the information presented to the City Council when a waiver of the appeal fee was requested, as well as all other documents related to the Northeast Ridge, be considered as part of the record. She said that this development has already undergone a design review process, and this unit is 25 percent larger than the original approvals. She added that the developer's requirements under the HCP have yet to be completed. She questioned the scope of the Zoning Administrator's power to approve any increases in size of units, and stated that the Zoning Administrator can only approve reductions in the size or number of units. Ms. Dillworth urged the Planning Commission to consider the possible impact of allowing every Northeast Ridge homeowner to close off outdoor space and add a deck. She objected to setting this precedent and urged the Commission to overturn staff's decision.

Linda Salmon, appellant, said her written appeal sets out her objections to the minor modification. She traced the history of the Northeast Ridge as a planned development, going back to Southwest Diversified/Visitacion Associates' original proposal in 1987-88. She noted the people were assured throughout the process that no further alterations or additions would be allowed. Ms. Salmon observed

that small houses in Brisbane sometimes need to expand or remodel, but not the large, new houses at the Northeast Ridge.

Ms. Salmon opposed the Zoning Administrator's decision approving this deck addition and enclosure as a minor modification. She read the criteria for minor modifications and pointed out that the provisions apply only to minor reductions, not expansions. She concluded that this kind of project was unsuitable and unacceptable for a planned development.

At 11:45 p.m., Commissioners agreed to extend the meeting for another 15 minutes. Chairman Hunter asked Ms. Salmon to conclude her remarks.

Ms. Salmon noted the City should not allow this alteration to a carefully designed planned development, and she urged the Commission to reject the Zoning Administrator's decision and decline this proposal. She added that the City should work to protect the endangered habitat on the Northeast Ridge, and modifications should not be approved without full public hearings and consideration of the intent of the planned development.

Yolanda Aquino said plans for this modification were discussed extensively with the homeowners association, architect, and City staff. She questioned how the proposal would impacted butterfly habitat.

Jess Aquino, owner, clarified that the scope of work did not involve foundation alterations. He said the purpose of the project was to make the small dining room more usable for his family, and very little space was being added. Mrs. Aquino added that the modification will provide a bit more privacy.

There being no other members of the public who wished to address the Planning Commission on this matter, Commissioner Jameel made a motion, seconded by Commissioner Lentz, to close the public hearing. The motion was approved, 3 - 0 (Commissioner Maturo absent during voting), and the public hearing was closed.

Commissioner Lentz noted that although there were good arguments on both sides, he tended to favor the homeowner in this case. He pointed out that the applicant first obtained approval from the homeowners association and followed the proper procedures.

Commissioner Jameel asked about the Zoning Administrator's authority to approve expansions as well as reductions. Commissioner Lentz suggested dealing only with the issue of whether the staff decision in this case should be upheld.

Community Development Director Prince advised the Commission that the City Attorney determined that the Zoning Administrator has authority, as granted by the City Council, state law, and the Northeast Ridge conditions, to make decisions on minor modifications. He pointed out that minor modification is defined as up

to a 20 percent reduction in lot coverage, which implies an expansion or addition. He said this applicant wants to enclose portions of the building already within the footprint.

At 12:00 midnight, the Commission decided to continue the meeting another 15 minutes.

Commissioner Jameel noted that this homeowner went through the correct steps, and the proposed modification does not create undesirable visual impacts. He agreed with Commissioner Lentz that the Zoning Administrator's decision should be upheld and the homeowner should be allowed to proceed with the minor modification.

Chairman Hunter said he believed it was necessary for the Zoning Administrator to have authority to deal with matters like this. He observed that the problem with this application is that the house is situated in a relatively new development that was approved by the City as a package, a planned development with specific building footprints and styles.

Chairman Hunter noted that residents throughout the City need the ability to make changes to their dwellings as their household needs change, and the Northeast Ridge is no exception. He remarked that it might be necessary over time to make certain changes to the CC&R's as the community ages and grows.

Chairman Hunter said he had reservations about some aspects of the proposal, primarily because the development was thought through very carefully to provide a variety of styles and building shapes. He worried that allowing this request could lead to similar requests from other owners, which could start to change the character of the neighborhood. He noted that the more open spaces like decks and porches that are enclosed, the more the community closes itself to each other, contrary to the intent of the development. Chairman Hunter added that even minor changes to the fronts or rears of the houses can make a big difference.

Chairman Hunter commented that this appeal gives the Planning Commission an opportunity to provide direction to staff as to how future applications of this type in the Northeast Ridge should be handled. He recognized that the proposed addition did not add much floor space, but it could lead to additional changes that would shift the original intent of the Northeast Ridge away from what was planned.

Chairman Hunter noted that because this is the first such application that has come to the City, he favored upholding the Zoning Administrator's decision and allowing the homeowner to enclose the space as proposed. He stated that he hoped this kind of modification in the future would be carefully considered by the Planning Department because of the concerns he articulated.

Commissioner Lentz moved to uphold the Zoning Administrator's decision and deny the appeal. The motion was seconded by Commissioner Jameel and approved, 3 - 0 (Commissioner Maturo absent during voting).

3. **100-182 Old County Road;** Exterior Improvements to the Brisbane Village Shopping Center; United Ng's Limited Partnership; APN 005-212-110

Commissioner Maturo returned to the dais.

Senior Planner Tune said the applicant proposes repainting the Brisbane Village Shopping Center, and he drew attention to the submitted color samples. He noted the Planning Director received authority to approve these changes when the Planning Commission approved the design permit for the shopping center remodel in 1997. He stated that this matter is being presented as an informational item to advise the Commission of staff's intent to issue a permit.

Commissioner Lentz encouraged the applicant to install bike racks. He recalled discussion of this idea a couple years ago.

Charles Ng, owner, said the shopping center was remodeled about ten years ago, and the paint has begun to peel and crack. He noted the sole purpose of the project is repainting and tiling. Mr. Ng stated that few customers ride bikes to the shopping center, and adding bike racks could eliminate some parking spaces. He pointed out that parking is already scarce, especially at lunchtime.

Commissioner Lentz urged the applicant to try to find a location on the property where a bike rack could be installed without eliminating parking. He applauded the applicant for making the property more appealing by repainting. He noted a bicycle rack would entail a small cost, and it might make some of the tenants and customers happier.

Mr. Ng clarified that he was not opposed to a bicycle rack, and would consider a rack in an appropriate place. He objected to using the sidewalk or parking spaces. He indicated there was a fatality as a result of a collision between a skateboarder and a customer at the shopping center, and said signs are posted in the area to discourage this kind of activity. He stated that if a proper location can be found, he would consider a bike rack.

Commissioners thanked Mr. Ng for his willingness to consider a bike rack.

At 12:15 a.m., Commissioners agreed to continue the meeting until 12:30 a.m.

Commissioners expressed support for the proposed changes.

#### ITEMS INITIATED BY STAFF

RECORDED AT THE REQUEST OF:  
First American Title  
WHEN RECORDED RETURN TO:

Mr. Kevin Fredrickson  
Brookfield Homes  
500 LaGonda Way, Ste. 100  
Danville, CA 94526

2003-295992

02:58pm 10/14/03 DR Fee: 277.00

Count of pages ~~84~~ 92

Recorded in Official Records

County of San Mateo

Warren Slocum

Assessor-County Clerk-Recorder



Note: This document is excerpted for the Planning Commission meeting of 7/10/2025. The document is available for viewing in its entirety upon request.

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# DECLARATION OF COVENANTS CONDITIONS AND RESTRICTIONS OF LANDMARK AT THE RIDGE

A Common Interest Development

If this document contains any restriction based on race, color, religion, sex, familial status, marital status, disability, national origin, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to Section 12956.1 of the Government Code. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.



maintenance, repair and replacement. After completion of the work, the Owner shall have the duty to restore the Common Area to its original condition.

5.3.7 Storm Drainage: Each Owner shall regularly clear all storm drainage inlets and preserve the capacity and flow of all catch basins, surface and subsurface storm drainage Improvements within the Owner's Lot whether they serve solely that Owner's Lot or other real property in the Project. Each Owner shall at all times comply with the applicable portions of the Slope and Drainage Maintenance Plan with respect to the storm drainage Improvements situated in the Owner's Lot and all slopes within the enclosed portions of their Lot. This plan provides for specific maintenance measures and inspections to be performed on the Owner's Lot by the Owner and by the Association for the protection of slope areas.

5.3.8 Water Lines: Each Owner shall Maintain all domestic water lines within the Owner's Lot which connect the Owner's meter to the Owner's Residence.

5.3.9 Fire Sprinkler Systems: Each Owner shall at all times Maintain any fire sprinkler system installed by Declarant on or in the Owner's Residence, including any eave and deck fire sprinkler system, in accordance with any applicable requirements set forth in the Final Habitat Fire Buffer Program approved by the City.

5.4 ALTERATIONS TO LOTS AND RESIDENCES: Alterations may be made to the interior of an Owner's Residence, if the Alterations do not impair the structural integrity of the Residence and if the Owner complies with all laws and ordinances regarding alterations and remodeling. Any proposals for Alterations on Lots or to the exteriors of Residences shall be made in accordance with the provisions of Article XI.

#### 5.5 FENCES:

5.5.1 Party Fences: The Owners of a Party Fence shall Maintain it and shall share the costs of Maintaining it equally except that all costs of Maintaining the Party Fence which are a result of the negligent or willful action of an Owner shall be borne by that Owner. An Owner who Maintains a Party Fence is entitled to and has a right of contribution from the other Owners of the Party Fence which shall be appurtenant to the Lot and shall pass to the successor(s) in interest of the Owner entitled to contribution.

5.5.2 Fences and Walls Separating Common Area and Lots: Each fence or wall (including retaining walls) which separates a Lot from Common Area shall be Maintained by the Owner of the Lot. Maintenance shall include refinishing the exterior surface of a fence if that surface was previously finished with paint or stain.

5.5.3 Other Fences on Lots: Except as provided in 5.5.1 and 5.5.2, above, each Owner shall Maintain all fences, wall and retaining walls situated on their Lot.

5.5.4 Fence Design: All fences installed in the Project shall be of the same size, style, height, type and color as originally installed by Declarant.

5.6 LANDSCAPING: All landscaping in the Project shall be Maintained and cared for in a manner consistent with the standards of design and quality as originally established by Declarant and in a condition comparable to that of other well Maintained residential areas in the vicinity of the Project. All landscaping shall be Maintained in a neat and orderly condition. Any weeds shall be removed and any diseased or dead lawn, trees, ground cover or shrubbery shall be removed and replaced with healthy landscaping. All lawn areas shall be neatly mowed and trees and shrubs shall be neatly trimmed and thinned as appropriate. Regular landscape maintenance shall be performed which shall include regular fertilization and other landscape management practices necessary to promote a healthy weed free environment for optimum plant growth. No invasive plants, as identified in the Architectural Standards, shall be Maintained or permitted anywhere in the Project. Landscaping must be controlled to Maintain

## **ARTICLE XI**

### **ARCHITECTURAL AND LANDSCAPING CONTROL**

#### **11.1 APPLICABILITY:**

11.1.1 Generally: Except as otherwise provided in this Declaration, proposals for Alterations (which includes all landscaping) are subject to the provisions of this Article and may not be made until approved in accordance with the provisions of this Article. No Owner may submit any application to the City for a building permit to construct an addition to a Residence unless the application has first been submitted and approved pursuant to this Article.

11.1.2 Exceptions: The provisions of this Declaration requiring architectural approvals do not apply to (1) repainting or refinishing any Improvement in accordance with the color palette (including hue, intensity, tone and shade) approved by the City at the time of recordation of this Declaration and on file with the Association, or (2) repairing any Improvement with the same materials with which it was originally constructed, or (3) installing or displaying flags or Brisbane Stars. The provisions of this Declaration requiring architectural approvals includes planting or removing landscaping. The Architectural Standards may establish additional exceptions from time to time.

11.1.3 Declarant Exemption: The provisions of this Declaration requiring architectural approvals do not apply to the original construction of any Improvements on a Lot by Declarant, its agents, contractors or employees. The provisions of this paragraph may not be amended without the consent of Declarant until all of the Additional Property has been annexed to the Project and all of the Lots in the Project owned by Declarant have been conveyed.

11.1.4 Additional Requirement for Grading and Related Work: No Owner shall grade or fill or otherwise alter the slope or contour of any Lot, construct or alter any drainage pattern or facility, construct or alter any foundation or permanent structure (including, but not by way of limitation, swimming pools, ponds and spas), or perform any earth work, including installation of irrigation, without first (i) retaining a soils engineer or civil engineer, as appropriate, duly licensed by the State of California, and receiving from such engineer written recommendations, plans and specifications regarding such proposed grade, fill, alteration, construction or earth work (collectively referred to as "Work"), (ii) obtaining the written approval of the Board (or the committee appointed by the Board to perform architectural review), and (iii) obtaining such permits and approvals from the City or any other governmental agency as may be required. No Owner shall perform any Work except in conformance with the recommendations, plans and specifications of such engineer. Each Owner, by acceptance of a deed to a Lot, shall be deemed to covenant and agree to comply with and conform to such recommendations, plans and specifications and shall indemnify the Association and Declarant against any losses, claims, liabilities, costs and/or attorneys' fees resulting from or related to any failure of that Owner or its engineers, contractors or agents to comply with this Section.

11.1.5 Limitation of Liability: Neither the Board nor any committee appointed by the Board to perform architectural review shall have any duty to (i) investigate the adequacy of any engineer's recommendations concerning the type of construction or adequacy or advisability of any proposed grading or other work to be performed on any Lot, or (ii) take any steps to ensure that the Owner complies with any such engineering recommendations.

11.1.6 Governmental Approvals: Proposals for Alterations may also be subject to review and approval by the City. No Owner may modify the exterior of their Residence, construct an addition or repaint the exterior of their Residence (except in the same color, hue, intensity, tone, and shade) without the approval of the City in accordance with Planned Development Permit PD-1-89 and Design Permit DP-89. Satisfying the provisions of this Declaration does not automatically satisfy any requirement for governmental approval, permitting or inspection. All approvals, permits and inspections which are



required under local, state or federal law for any proposed Alteration are the responsibility of the Owner and must be obtained by the Owner in addition to the approvals required by this Declaration.

**11.2 RESERVATION TO DECLARANT:** Notwithstanding the power of the Board to appoint committees, Declarant hereby reserves to itself the right to appoint an Architectural Committee in accordance with the provisions of this Article. When there is no longer any Member appointed by Declarant on the Committee, the Board may decide to dissolve the Committee and undertake the Committee's responsibilities.

**11.3 MEMBERS:** The Architectural Committee ("Committee") shall consist of a chairman and two (2) additional members. Persons appointed to the Committee by the Board shall be Members of the Association. Persons appointed to the Committee by the Declarant need not be Members of the Association. All members shall serve until the expiration of the term for which they were appointed, if specified by the Board, or until they resign or are replaced. Declarant may appoint all of the original members of the Committee and all replacements until the first anniversary of the issuance of the Public Report for the first Phase of the Project. After the date which is one (1) year from the date of issuance of the Public Report for the first Phase of the Project and until the conveyance of ninety percent (90%) of the total of all Lots in the Project and all Lots proposed for the Additional Property or the fifth (5<sup>th</sup>) anniversary of the issuance of the Public Report for the first Phase of the Project, whichever first occurs, the Board shall have the power to appoint one member of the Committee and Declarant may appoint the remaining members of the Committee. Thereafter, the Board shall appoint all of the members of the Committee or dissolve the Committee as provided in Section 11.2, above. Upon the conveyance of one hundred percent (100%) of all Lots, the term of any remaining members appointed by Declarant shall terminate and replacement members shall be appointed by the Board. The Board may appoint a replacement for any member of the Committee originally appointed by the Board who resigns or otherwise fails to act. Declarant may appoint a replacement for any member of the Committee originally appointed by Declarant who resigns or otherwise fails to act, unless such member resigns in order to enable the Board to appoint a member as required by this Section. If Declarant fails to appoint a replacement it is authorized to appoint within fifteen (15) days after receiving notice of the vacancy, the Board shall appoint the replacement.

**11.4 DUTIES AND POWERS:**

**11.4.1 Duties:** The Committee shall review and approve, conditionally approve, or deny all plans, submittals, applications and requests made or tendered to it by Owners or their agents, pursuant to the provisions of this Declaration. In connection therewith, the Committee may investigate and consider the architecture, design, layout, landscaping, energy conservation measures, water conservation measures, fence detail, and other features of the proposed Improvements.

**11.4.2 Architectural Standards:** The Committee, from time to time and in its sole discretion, may adopt architectural rules, regulations and guidelines ("Architectural Standards"). The Architectural Standards may impose specific requirements on individual Lots if those requirements are reasonable in light of specific Lot topography, visibility or other factors. The Architectural Standards shall be effective when they are adopted by the Committee. The Architectural Standards shall interpret and implement the provisions of this Declaration by setting forth the standards and procedures for architectural review and guidelines for architectural design, placement of buildings, color schemes, exterior finishes and materials, landscaping, fences, and similar features which may be used in the Project; provided, however, that the Architectural Standards shall not be in derogation of the minimum standards established by this Declaration. The Architectural Standards may include a schedule of fees for processing submittals (which shall not exceed the amount necessary to defray all costs incurred by the Committee in processing the submittals) and establish the time and manner in which such fees shall be paid. The Architectural Standards shall constitute Rules.

**11.4.3 Powers:** The Committee may adopt rules and regulations for the transaction of business, scheduling of meetings, conduct of meetings and related matters. The Committee may also adopt

criteria, consistent with the purpose and intent of this Declaration to be used in making its determination to approve, conditionally approve or deny any matter submitted to it for decision.

11.4.4 Consultants: With the consent of the Board, the Committee may hire and the Association shall pay consulting architects, landscape architects, urban designers, engineers, inspectors, and/or attorneys in order to advise and assist the Committee in performing its duties.

11.5 APPLICATION FOR APPROVAL OF IMPROVEMENTS: Any Owner, except Declarant and its designated agents, who wants to perform any Alteration for which approval is required shall notify the Committee in writing of the nature of the proposed work and shall furnish such information as may be required by the Architectural Standards or reasonably requested by the Committee.

11.6 BASIS FOR APPROVAL OF IMPROVEMENTS: The Committee may approve the proposal only if the Committee finds that (i) the plans and specifications conform to this Declaration and to the Architectural Standards in effect at the time the proposal was submitted, (ii) the proposed Alteration will be consistent with the standards of the Project and the provisions of this Declaration as to harmony of exterior design, visibility with respect to existing structures and environment, and location with respect to topography and finished grade elevation, and (iii) the exterior color (including hue, intensity, tone and shade) of the visible Improvements either conforms to the color palette approved by the City at the time of recordation of this Declaration (and on file with the Association) or is consistent with the historical design of the Residences.

11.7 FORM OF APPROVALS, CONDITIONAL APPROVALS AND DENIALS: All approvals, conditional approvals and denials must be in writing. Any denial of a proposal must state the reasons for the decision to be valid. Any proposal which has not been rejected in writing within sixty (60) days from the date of submission will be deemed approved.

11.8 PROCEEDING WITH WORK: Upon approval of the Committee, the Owner shall diligently proceed with the commencement and completion of all work so approved. Work must be commenced within one (1) year from the date of the approval. If the Owner fails to comply with the provisions of this Section, the approval given shall be deemed revoked unless the Committee extends the time for commencement. Any request for an extension shall be in writing. No extension shall be granted unless the Committee finds that there has been no change in the circumstances under which the original approval was granted.

11.9 FAILURE TO COMPLETE WORK: Completion of the work approved must occur within eighteen (18) months following the approval of the work unless the Committee determines that completion is impossible or would result in great hardship to the Owner due to strikes, fires, national emergencies, natural calamities or other supervening forces beyond the Owner's control. If the Owner fails to complete the work within the eighteen (18) month period, the Committee may notify the Owner in writing of the non-compliance and shall proceed in accordance with the provisions of Section 11.11, below.

11.10 DETERMINATION OF COMPLIANCE: Any work performed, whether or not the Owner obtained proper approvals, shall be inspected and a determination of compliance shall be made as follows:

11.10.1 Notice of Completion: Within forty five (45) days after completion of any work performed by an Owner for which approval was required, the Owner shall give written notice of completion to the Committee.

11.10.2 Inspection: Within sixty (60) days after the Committee's receipt of the Owner's notice of completion, or, if the Owner fails to give a written notice of completion to the Committee within the completion period specified in Section 11.9, above, a designee of the Committee may inspect the work performed and determine whether it was performed and completed in substantial compliance with the approval granted. If the Committee finds that the work was not performed or completed in substantial compliance with the approval granted or if the Committee finds that the approval required was not



obtained, the Committee shall notify the Owner in writing of the non-compliance. The notice shall specify the particulars of non-compliance and shall require the Owner to remedy the non-compliance.

**11.11 FAILURE TO REMEDY THE NON-COMPLIANCE:** If the Committee has determined that an Owner has not constructed an Improvement consistent with the specifications of the approval granted or within the time permitted for completion and if the Owner fails to remedy such non-compliance in accordance with the provisions of the notice of non-compliance, then after the expiration of thirty (30) days from the date of such notification, the Committee shall notify the Board, and the Board shall provide Notice and Hearing to consider the Owner's continuing non-compliance. At the Hearing, if the Board finds that there is no valid reason for the continuing non-compliance, the Board shall determine the estimated costs of correcting it. The Board shall then require the Owner to remedy or remove the same within a period of not more than forty-five (45) days from the date of the Board's determination. If the Owner does not comply with the Board's ruling within such period or within any extension of such period as the Board, in its discretion, may grant, the Board may either remove the non-complying Improvement or remedy the non-compliance. The costs of such action shall be assessed against the Owner as a Reimbursement Assessment.

**11.12 WAIVER:** Approval of any plans, drawings or specifications for any work proposed, or for any other matter requiring approval shall not be deemed to constitute a waiver of any right to deny approval of any similar plan, drawing, specification or matter subsequently submitted for approval.

**11.13 APPEAL OF DECISION OF COMMITTEE:** This Section does not apply if the Board has dissolved the Committee or during the period of time that a majority of the Members of the Architectural Committee have been appointed by Declarant. If the Owner who applied or who the Committee determined should have applied for approval of an Alteration on a Lot or Residence disputes the jurisdiction or powers of the Committee or any requirement, rule, regulation or decision of the Committee applicable to the denial or conditional approval of the Owner's application (collectively referred to as "decision"), that Owner may appeal such decision to the Board. The Board shall notify the Owner of the time, date and place of a hearing to review the decision of the Committee. The notice shall be given at least fifteen (15) days prior to the date set for the hearing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered seventy-two (72) hours after it has been deposited in the United States mail, first class, postage prepaid, addressed to the Owner at the address given by the Owner to the Board for the purpose of service of notices or to the address of the Owner's Lot if no other address has been provided. After the hearing has taken place, the Board shall notify the Owner of its decision. The decision shall become effective not less than five (5) days after the date of the hearing. The determination of the Board shall be final.

**11.14 LIABILITY:** If members of the Architectural Committee have acted in good faith, neither the Committee nor any member shall be liable to the Association or to any Owner for any damage, loss or prejudice suffered or claimed due to: (a) the approval or disapproval of any plans, drawings and specifications, whether or not defective; (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings, and specifications; (c) the development of any property within the Project; or (d) the execution and filing of any estoppel certificate, whether or not the facts therein are correct.

**11.15 EVIDENCE OF APPROVAL OR DISAPPROVAL:** After a determination of compliance is made pursuant to Section 11.10, the Board may issue a written Notice of Architectural Determination. The Notice of Architectural Determination shall be executed by any two (2) Directors and shall certify that as of the date of the Notice either (i) the work completed complies with the provisions of this Declaration and the approval(s) issued by the Architectural Committee ("Notice of Approval") or (ii) the work completed does not comply with the provisions of this Declaration or the approval(s) issued by the Architectural Committee ("Notice of Disapproval"). A Notice of Disapproval shall also identify the particulars of the non-compliance. Any successor in interest of the Owner shall be entitled to rely on a Notice of Architectural Determination with respect to the matters set forth. Each Owner shall disclose to the Owner's subsequent purchaser any Notice of Disapproval unless the Owner has a subsequently issued

Notice of Approval which covers the same Alteration. The Notice of Architectural Determination shall be conclusive as between the Association, the Architectural Committee, Declarant and all Owners and such persons deriving any interest through any of them. Any Owner may make a written request that the Board prepare and execute a Notice of Architectural Determination, and the Board shall do so within sixty (60) days of its receipt of the request.