



## OFFICE OF THE CITY MANAGER

**TO:** City Council  
**FROM:** Cynthia J. Kurtz, City Manager  
**DATE:** May 3, 2004  
**SUBJECT:** Procedures for Consistency Findings in Development Projects

On April 19, 2004 the City Council voted to call-up the Design Commission's approval of the Concept Design for the Raymond Theater. During this discussion questions were raised about the process to evaluate consistency of a project as it evolves through the approval process and responds to conditions and mitigation measures. Questions specific to the Raymond Theater project focused on changes/consistency of the project between the first discretionary action, the Design Commission review, and City Council review.

### **Procedures for Consistency Findings**

When projects receive approval by the City Council, Board of Zoning Appeals, Hearing Officer or Design Commission such approval is based on a preliminary design for the project (with the exception of final design review). In such cases, a standard condition of approval will require that the project final design be consistent with the schematic, which was the basis of initial review and approval. Such a standard condition of approval typically reads:

*The site plan submitted for building permits shall substantially conform to the site plan submitted with this application except that the project may be modified if such approval has been made by the Zoning Administrator and the Design Commission.*

In practice, a project can have significant changes after it has been approved provided that the project adheres to the conditions of approval and the City's codes. Such changes are a normal part of project design development, and such conditions of approval are generally intended to allow some flexibility when such changes occur. In some cases staff may encourage specific changes to improve the project.

When changes occur during design development, staff (i.e. Zoning Administrator) has the responsibility of reviewing the project and determining consistency or inconsistency with the conditions of approval. A consistency review typically also includes review of any environmental determinations or mitigation measures to insure that the project, as modified, does not introduce any new unmitigated environmental impacts over those that were previously identified. When reviewing changes, staff reviews the project to ensure conformance with the original approvals and conditions thereof; and whether the change results in significant new impacts. If a determination is

made that a project has changed substantially, the Zoning Code allows for a project to be modified through a public hearing process.

In most cases, such consistency findings are routine and do not require written documentation. However, on occasion, issues are complex and detailed analysis is prepared. In either situation, such determinations are subject to call for review or appeal to the Board of Zoning Appeals.

### **Land Use**

The zoning code includes a list of permitted land uses and conditionally permitted land uses. A building use may be changed to any permitted use without approval. When a business obtains a business license, the address is checked to ensure that it complies with the permitted uses.

### **Raymond Theater Example**

The Theater site is zoned CD-15 and the adjacent vacant lot is located in the Civic Center Master Plan area. Permitted uses for this zone include a wide range of retail and office uses as well as residential uses. The project conforms to the uses permitted by the code for this zone.

The first discretionary action for the project was the application for four zoning code variances; these were for height, setbacks, tandem parking, and the number of compact parking spaces. The setback variance permitted the building to have a setback (where one was not permitted) to provide a consistent building setback. After the Board of Zoning Appeals denied the variance application, the City Council approved it in January 2002 with 11 conditions (see attached) as well as mitigation measures. The plans included with the variance application indicated that the building would contain 61 residential units and 28,566 square feet of commercial uses.

Because of litigation, two years lapsed between the original approvals by the City Council and the application for Design Review in Spring of 2004. The plans evolved between the variance application and the submittal for design review. The modified plans conformed to both the development standards as approved by the variance and the permitted land use. The number of residential units was decreased to 36 and the amount of commercial space was increased to 32,500 square feet including 13 work/live units. It should be noted that staff encouraged an expansion of the retail space along a portion of Holly Street.

In reviewing the project, as modified, it was determined that the modified project was within the parameters of the original approval, the conditions of approval, and the mitigation measures identified in the E.I.R. A determination was also made that the modified project did not introduce any new environmental impacts over those that had already been analyzed. In this instance, staff took the extra precaution of contracting with the firm that prepared the environmental documents and requested that they provide their opinion on consistency. They found the project consistent.

Respectfully submitted,



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City Manager