

ATTACHMENT E

Analysis of Requested Entitlements

The proposed project requires several land use entitlements. Each entitlement has specific Findings of Fact that are required for approval by the City Council.

ADJUSTMENT PERMIT:

An Adjustment Permit (AP) is a land use entitlement (similar to a Variance) that may adjust or modify development standards of the Zoning Code. The AP is intended to provide flexibility for a project in which unique site conditions exist that can create constraints to development of a new project. This project requests three adjustments.

1) Adjustment Permit to Exceed Height

The Revised Project proposes building ranging from a height of 77 feet at the northern end of the site, adjacent to E. Colorado Boulevard, to its lowest height of 39 feet, 9 inches at the southern, interior portion of the site. The building incorporates several step-backs on the upper floors, and gradually steps down in height from north to south, with single story buildings on El Molino Avenue.

The building would exceed the maximum allowable height in two of the three height districts on the site. Specifically, a portion of the fifth floor would exceed the 75 foot height limit by approximately two feet; and a portion of second floor would exceed the 35 foot height limit by approximately five feet in the rear portion of the site, near the driveway entrance.

The site is unique in that it is divided by three different height districts: northern portion—75 feet; middle portion—50 feet; and southern portion—35 feet. Moreover, the property slopes five feet downward from north to south. The various height districts create substantial challenges in developing an office building. The developer contends that a more uniform height to the building is desirable because it allows larger and more open floor plates which are suitable for an office use. The staff generally agrees that achieving a fairly uniform building height is helpful when designing the building interiors and meeting the operational objectives of a commercial project. It appears that that substantial variation in the modulation in the massing of the building can be incorporated to achieve a visually interesting building that can be compatible with other larger developments in the vicinity.

2) Adjustment Permit to Exceed Floor Area Ratio (FAR) in One Zoning District

The Revised Project proposes to place the majority of the building mass along Colorado Boulevard and the eastern property line, instead of meeting the individual FAR requirement in each separate FAR district. The northern portion of the site is in the 3.0 FAR district, and the southern portion of the site is in the 2.0 FAR district. The 3.0 FAR district would have 106,615 square feet and the 2.0 FAR district would have 38,813 square feet. The proposed FAR in the 3.0 district would be 3.6, and the proposed FAR in the 2.0 district would be 1.4. The average FAR for the entire project site would be 2.6.

The Adjustment for FAR allows for flexibility in the location of floor area on the site. This flexibility allows the project to provide publicly accessible courtyards on El Molino Avenue that reduce building mass near the streets and enhance the pedestrian retail and dining destination of the Playhouse district. The Adjustment also allows for flexibility in building masses that create greater variation among the modules with step backs on the upper floors.

3) Adjustment Permit for Reduction in Loading Spaces

The Zoning Code requires on-site loading spaces for new projects based on floor area and land use classification. The building would include a total 145,428 square feet of floor area, the majority (137,253 square feet) is office use; the remainder is ancillary retail and restaurant uses on the ground floor.

The Revised Project proposes a total of two loading spaces on the ground floor that would have vehicular access from a driveway on S. El Molino Ave. Because the project proposes four fewer loading spaces than are required by the Zoning Code, an Adjustment to the loading requirement is requested.

The applicant asserts that the provision of six loading spaces on the site, especially if they were located the ground floor, would consume extensive floor area that would reduce the outdoor public. The applicant believes that the location of the ground floor loading spaces would more likely to be used by delivery trucks rather than subterranean loading spaces because of their easy access.

The applicant conducted a survey of commercial buildings in the vicinity to illustrate the number of loading spaces that are typically provided by office uses in the vicinity and for other commercial developments in different jurisdictions (see Section IV-B of the applicant submittals booklet). The survey includes a total of nine predominantly office use projects ranging from 123,000 square feet to 287,000 square feet. Based on the surveyed properties, the average number of loading spaces is generally one loading space for every 100,000 square feet of office use. Based on this data, the applicant recommends that the proposed two loading spaces for the project of 145,428 square feet are adequate to serve the loading demands of the project.

The proposed office and retail uses receive the majority of deliveries in small trucks or vans with short delivery periods. The uses typically do not generate trips by large delivery trucks that will be parked in the loading bays for long periods of time, except when moving activities occur. It is anticipated that usually at least one loading space will be unoccupied. Also, the Central District Specific Plan discourages driveways with vehicular access from Colorado Bl. This results in the placement of all driveways for garage loading to be located on S. El Molino Ave., thereby limiting the site plan to accommodate loading in other locations.

Conditional Use Permit for New Non-Residential Project over 25,000 Square Feet

A Conditional Use Permit (CUP) is required for new non-residential projects that exceed 25,000 square feet. The Revised Project includes a total of 145,428 square feet of floor area and a four-level subterranean parking garage 367 parking spaces.

In order to approve the requested CUP, the City Council is required to make six specific Findings of Fact in accordance with the Zoning Code. These findings concern the project's compliance with the goals and policies of the General Plan and Central District Specific plan, its compatibility with the existing development in the vicinity, and its potential affect on the health, general welfare, and public safety of persons residing and working in the neighborhood.

The Revised Project is compatible with existing and future land uses, aesthetic values, character, scale, and view protection in the vicinity. The existing neighborhood is developed with a mix of commercial, residential, and institutional land uses. The existing neighborhood includes buildings of different heights, construction types, vintages, and architectural character. The general design, site plan, pedestrian orientation to the streets and sidewalks, and the publicly accessible courtyards are in character with other development in the vicinity. The design characteristics of the project will be reviewed in the Design Review process to ensure compliance with the applicable design guidelines. The mitigations proposed based on the conclusion in the Final EIR (and Final EIR Addendum) will reduce all potential environmental impacts to less than significant, except for two street segment impacts that would be created by a substantial new commercial development at the subject location.

Minor Conditional Use Permit for Transit-Oriented Development

A Minor Conditional Use Permit (MCUP) is required for a new project that exceeds 15,000 square feet in the Central District Transit-Oriented area. Such developments are considered Transit-Oriented Developments (TODs). The development standards of the TOD provide for a mixture of commercial, high-density residential, mixed-use, public, and semi-public uses in close proximity to light rail stations, encouraging transit usage in conjunction with a safe and pleasant pedestrian-oriented environment. These standards emphasize intensification of development and reduced reliance on motor vehicles.

In order for the City Council to approve the MCUP for TOD, the Council is required to make three findings related to TOD use, and also the six standard findings for the CUP (as discussed above). The findings unique to the TOD use include that the project: 1) consists of a use, or mix of uses, that encourage transit use and is oriented toward the transit user; 2) is designed to enhance pedestrian access and/or other non-motor vehicle modes of transportation to public transit; and 3) encourages pedestrian activity and/or other non-motor vehicle modes of transportation and reduces dependency on motor vehicles.

The Revised Project includes ground floor retail and restaurant uses that are oriented toward E. Colorado Boulevard and S. El Molino Avenue. The project has been

designed to comply with the reduced number of on-site parking stalls in compliance with the Transit-Oriented Development standards of the Zoning Code. The project includes bicycle parking for employees and visitors. The project site is accessible by users of the Gold Line. In addition to the required TOD findings, the project complies with several transit and pedestrian-oriented policies, goals, and objectives of the General Plan and the Central District Specific Plan (see Attachment D). It will also meet the Trip Reduction requirements.

Private Tree Removal Permit

The project site includes a total of 17 trees on the private property. The Revised Project proposes to remove all of the trees on the site. One of these trees is a protected specimen *Ethrythrina caffra* (Coral tree) under the City's Tree Protection Ordinance (TPO, P.M.C. 8.52), and therefore it requires a Private Tree Removal Permit for removal.

The TPO allows for removal of a protected tree if the proposal meets at least one of six required findings. A tree report was prepared by Charles Elliot, Landscape Architect (Registration No. CA4502). In review of the report, it appears that that the application complies with three findings:

- 1) There is an objective feature of the tree that makes the tree not suitable for protection. The tree is heavily scarred in several areas due to substantial pruning that has occurred due to structural failure of the tree. The large scars are not only detrimental to the health of the tree, but are unsightly and have diminished the ornamental quality of the tree.
- 2) The present condition of the tree is not likely to survive. The tree has naturally weak structure at its base, and that this condition is likely to worsen over the coming years as the overhanging lateral branches continue to grow and gain girth. Additionally, there are several girdling roots evident above ground. This could explain certain areas of die back already present in the tree, which will likely worsen over time as these roots continue to grow and choke off the root structure. The tree is heavily scarred in several areas. These weak spots on the tree are vulnerable areas for insects and disease to enter the tree, causing eventual deformation, or decline and failure of the tree. The tree is a likely candidate for wind storm damage as it continues to grow laterally. This tree will likely continue to be deformed by die back, limb breakage and an eventual split at the base.
- 3) There would be a substantial hardship to the private property owner in the enjoyment and use of real property if the injury or removal is not permitted. The tree is located in the interior of the subject property. The extensive excavation for the below grade public and private parking structure will require the removal of all trees. To not allow the project to construct the underground parking garage in order to retain the tree would be substantial hardship to the use of the real property because it could not accommodate a reasonable development that is typical of other commercial and mixed-use developments in the vicinity.

The proposed preliminary landscape plan for the new project includes several trees and other landscaping in the proposed courtyards that will have aesthetic benefits. The final landscape plan will be reviewed by the Design Commission to ensure that it will compliment the proposed building and enhance visual character of the property and streetscape.