

Agenda Report

TO: CITY COUNCIL **DATE: MAY 24, 1999**

FROM: CITY MANAGER

**SUBJECT: APPEAL OF DESIGN COMMISSION DECISION TO DENY A
REQUEST FOR RECONSIDERATION OF CONDITIONS OF
APPROVAL FOR MAJOR MODIFICATIONS TO FINAL DESIGN
APPROVAL
2767 EAST COLORADO BOULEVARD**

CITY MANAGER'S RECOMMENDATION:

It is recommended that the City Council:

- (1) Find that the proposed revisions to the approved final design for the subject project comply with the Purposes of Design Review (in §17.92.010 of the Zoning Code), and the City-wide Design Principles and Criteria (in the General Plan); and
- (2) Find that denial of unrestricted access to adjacent properties, for purposes of construction, constitutes changed circumstances (in accordance with §17.80.060.B of the PMC) sufficient to justify the modification of the original approval; and
- (3) Approve the application for major modifications to the approved final design for the subject project.

DESIGN COMMISSION RECOMMENDATION:

It is recommended that the City Council:

- (1) Find that the granting of limited access, for construction purposes, on the part of the adjacent property owners is not sufficient to justify a finding of changed circumstances (in accordance with §17.80.060.B of the PMC) sufficient to justify the modification of the original approval; and

- (2) Affirm the decision of the Design Commission to deny the applicant's request for reconsideration of the conditions of approval for major modifications to the approved final design approval for the subject project.

SUMMARY

During design review for the subject project it was noted that some walls abutted interior property lines and that this condition might complicate project construction as it would require the grant of rights of entry from adjacent property owners. During construction, adjacent property owners were not willing to grant rights of entry. Because of this condition, the applicant requested and was granted a modification to delete the exterior cement plaster from those walls where access to adjacent property was denied.

Subsequent to this approval, the applicant requested additional deletions from these walls. In reviewing this additional request, it was noted that adjacent property owners were willing to grant partial access, but in one case required conditions or restrictions that were not acceptable to the applicant. Based on this new information, the Design Commission rescinded the previous modifications and instructed the applicant to continue negotiations with the adjacent property owners for the purpose of construction the facility in the originally approved design. The applicant has appealed this decision on the basis that they have still not come to any agreement with the adjacent property owner.

PROJECT DESCRIPTION

The subject project at 2767 East Colorado Boulevard is a 5-story self-storage facility and a related one-story retail facility. The self-storage facility is of concrete masonry construction. The project design features protruding corner elements, which have a cement plaster finish over concrete masonry, and recessed walls, which have painted concrete masonry. The project design also features projecting cement plaster cornices at the 2nd floor line, the 5th floor line and the roof line.

BACKGROUND

Because of the project's size and location it is subject to design review under §17.92 of the PMC. The Design Commission reviewed the project and granted final design review approval on December 22, 1997.

During the design review process, it was noted that some of the building walls abutted or were adjacent to interior property lines. The applicant was advised that this might complicate the project construction. However, the applicant indicated that they had contacted the adjacent property owners and were confident of receiving rights of entry into adjacent properties for construction purposes.

During project construction, adjacent property owners were not willing to grant rights of entry. In a letter dated December 16, 1998 the applicant requested a modification to the

approved final design to delete the exterior cement plaster on the west elevation. Staff considered this a minor modification to the approved final design and granted the request, with conditions, on December 31, 1998. Subsequent to this approval, the applicant, in a letter dated February 22, 1999, requested further modifications to delete the 5th floor level cornice at all four corners of the facility (not just the west elevation) and to delete the roof-level cornice on the west elevation. The request was supported by letters from both adjacent property owners indicating their unwillingness to grant entry. Staff considered these further modifications to constitute major modifications and submitted the request to the Design Commission.

On March 8, 1999 the Design Commission:

1. Found that the denial of access to adjacent properties, for purposes of construction, constituted changed circumstances (in accordance with §17.80.060.B of the PMC) sufficient to justify the modification of the original approval; and
2. Approved the application for major modifications to the approved final design, with conditions.

One of the conditions of approval for this major modification was that, for consistency, the exterior cement plaster be deleted at all building elevations. Subsequent to this approval the applicant, in a letter dated March 18, 1999, returned to the Design Commission and requested reconsideration of this condition of approval for this major modification. He indicated that the concrete masonry walls, which had already been constructed, had not been suitably prepared for deletion of the cement plaster and painting. He expressed concern that adherence to this condition of approval would result in an aesthetically unacceptable exterior treatment. In support of the request, the applicant indicated that an agreement had been reached with one of the adjacent property owners to grant right of entry. However, the other property owner was willing only to grant limited access.

Staff recommended favorable consideration of the applicant's request. On April 12, 1999 the Design Commission:

1. Found that the granting of limited access for construction purposes on the part of adjacent property owners constituted changed circumstances sufficient to justify the modification of the previous approval, in accordance with §17.80.060.B of the PMC.
2. Rescinded the previous approval of major modifications to the final design approval, granted by the Commission on March 8, 1999;
3. Rescinded the previous approval of minor modifications to the final design approval, granted by staff on December 31, 1998; and
4. Required that project construction be completed in accordance with the original final design approval, dated December 22, 1997.

Prior to considering this request the Commission conducted a visit to the construction site. Although the Commission concurred that the deletion of cement plaster from the north, east and south elevations would be aesthetically unacceptable, they expressed the opinion that efforts to reach agreement with the property owner to the west had been insufficient and urged the applicant to make further attempts to come to agreement with this property owner, so that the project could be constructed as originally approved.

APPEAL

On April 21, 1999 the applicant appealed the Commission's decision to the City Council. The applicant wishes to delete the cement plaster and the cornices on the west elevation only. The agreement that they have reached with the property owner to the south will permit the installation of cement plaster and cornices on the south elevation. Despite continuing attempts, the applicant has not come to an acceptable agreement with the property owner to the west. Further he believes that the probability of doing so is remote.

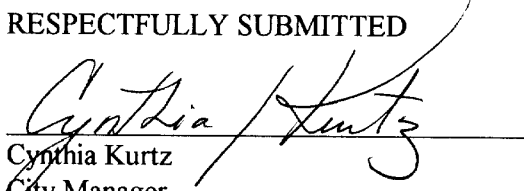
CITY MANAGER RECOMMENDATION

The City Manager's recommendation is based on the representation and documentation, provided by the applicant, that his reaching an agreement with the property owner to the west is unlikely. The installation of cement plaster and cornices, using conventional construction techniques, requires grant of entry to adjacent properties. Other methods are either prohibitively costly or untested.

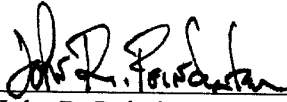
DESIGN COMMISSION RECOMMENDATION

The Design Commission believes that grant of right of entry to access the property to the west of the project is a matter of the applicant "coming to terms" with the property owner. The applicant's eventual success in reaching an agreement with the property owner to the south is evidence that also doing so with the property owner to the west is not totally unrealistic. Such an agreement would permit construction of the project in accordance with the originally approved design.

RESPECTFULLY SUBMITTED


Cynthia Kurtz
City Manager

Prepared by:



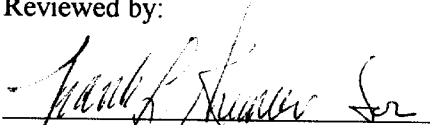
John R. Poindexter
Senior Planner, Design & Historic Preservation Section
Planning and Permitting Department

Approved by:



Darrell L. Lewis
Director, Planning and Permitting Department

Reviewed by:



Michele Beal Bagneris
City Attorney

ATTACHMENTS

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| Attachment 1 | Applicant requests for modifications |
| Attachment 2 | Letters from adjacent property owners |
| Attachment 3 | Photograph of 2767 East Colorado Blvd |