



REPORT TO THE COMMUNITY PLANNERS COMMITTEE

DATE ISSUED: July 22, 2009

ATTENTION: Community Planners Committee, Agenda of July 28, 2009

SUBJECT: SUBSTANTIAL CONFORMANCE REVIEW (S.C.R.):
PROCESS FIVE.

APPLICANT: City of San Diego - Development Services Department

SUMMARY

Issue: Should the S.C.R. process, as outlined within Municipal Code Section 126.0112, be amended?

Staff Recommendation: Make no changes to the current S.C.R. process as outlined within Municipal Code Section 126.0112.

Community Planners Committee: At their meeting on September 23, 2008, The Community Planners Committee (CPC) recommended that the S.C.R. process as outlined within Municipal Code Section 126.0112 be amended to require a Process-Two approval for all S.C.R. applications (see Attachment 1 – Draft S.C.R. Ordinance Amendment).

CPC also recommended that the City publish specific criteria for determining if modifications substantially conform to the approved permit/project. Please note that this recommendation has been incorporated and is a component of the Development Services Department's Information Bulletin 500-Substantial Conformance Review (Attachment 2).

Environmental Review: This action is exempt from CEQA pursuant to State CEQA Guidelines.

Fiscal Impact Statement: The imposition of a Process-Two decision for all S.C.R.'s will result in additional financial costs and increased processing times for affected applicants.

BACKGROUND

The City of San Diego's Land Development Code (Section 113.0103) defines Substantial Conformance as a revision to a development project that was approved through a permit or tentative map, that complies with the objectives, standards, guidelines, and conditions for that permit or tentative map.

The Land Development Code (Section 126.0112) goes on to state that a proposed minor modification to an approved development permit may be submitted to the City to determine if the revision is in substantial conformance with the approved permit. If the revision is determined to be in substantial conformance with the approved permit, the revision shall not require an amendment to the development permit.

Currently an S.C.R. decision outside the Coastal Zone is a Process-One staff level decision. Although a public notice is not provided, as a courtesy the S.C.R. application is distributed to the affected Community Planning Group. A Process-One staff-level decision is not appealable.

Within the Coastal Zone an S.C.R. determination is a Process-Two decision, which is a publicly noticed staff level decision with appeal rights to the Planning Commission. Under a Process-Two decision, the City distributes the S.C.R. application to the affected Community Planning Group for their review, consideration, and action. All Process-Two decisions are staff-level decisions, and include up to three separate public notices: a Notice of Future Decision is mailed out to all properties within 300-feet of the project at least 11 days prior to the staff decision; that Notice of Future Decision is posted on the project site; and a Notice of Decision (if one is requested) is mailed to any interested persons.

The Process-Two procedure also includes an appeal component that allows any member of the public to appeal the decision for any reason to the Planning Commission, regardless of any involvement that appellant may have had with the project previously.

The S.C.R. process is fundamental to the land development review process, and has been a standard practice within the Development Services Department for at least a decade. The S.C.R. process has generally been an efficient and effective practice for the majority of all projects throughout the years, however in the 2001-2002 timeframe City staff approved four S.C.R. applications which triggered some controversy within the community.

Between 2002 and 2005 three Grand Jury reports were issued which in part addressed the City's S.C.R. process. One of those Grand Jury reports found that the City's S.C.R. is flawed if it precludes public input. Part of the City's response to that finding indicated that City staff would forward to the City Council amendments to the Municipal Code to elevate a S.C.R. to a Process-Two decision. The draft Municipal Code amendment elevating a S.C.R. to Process-Two is included in Attachment 1.

Purpose of Substantial Conformance Review

S.C.R. is triggered by an applicant's desire to revise a project's design after the City has approved the original discretionary permit/project. This can result from a variety of factors including but not limited to: encountering unknown field conditions; from a property owner's desire to make improvements to the development proposal; from a change request by a potential buyer; as result of changes in the marketplace; from unexpected project construction costs; or because of a change in project ownership.

These changes can be requested at various points in the review or construction process. Many S.C.R.'s are processed as construction changes that occur once construction is underway and are often time-sensitive. Others are done well in advance of an applicant submitting plans for construction permits.

Staff begins an S.C.R. by first determining the nature and extent of the change being proposed by comparing it to the approved discretionary permit/project, including the approved permit conditions. Staff then determines if the changes are consistent with the prior approval. Appropriate land use plans (e.g. the General Plan, community plans, etc.) are then reviewed to determine if the proposed S.C.R. is still consistent with applicable guidelines and objectives.

Staff then consults with the public record for the initial approval including project notes, written correspondence, testimony at decision hearings (through reviewing the minutes and/or the hearing video archives), and discussions with staff involved in the original approval. Staff also reviews applicable regulations to insure that the proposed modifications would still comply. Professional judgment is then used, as well as the guidelines contained within Information Bulletin 500, to make the determination of whether the revised project is in substantial conformance with the original approved project.

Examples of typical S.C.R. requests include relocation of plant material and/or change of plant material types (i.e., a different species of shade tree); modifications to grading to reduce cut and fill; changes to structure locations within lot setback; changes in driveway or road alignment to improve safety or site design considerations; modifications to signage; changes to utility locations; changes in finish materials within the context of the originally approved materials; modifications to parking lot layouts within the quantity of required spaces; changes to pedestrian circulation to coordinate with the final site and architectural design, etc.

City Staff reviews an average of 80 Substantial Conformance Review applications per year. Since 2002, City staff has processed over 300 Process-One S.C.R. applications without significant controversy, argument, or debate from the community.

DISCUSSION

City Staff Recommendation:

The City staff recommendation is to maintain the status quo in regards to the current S.C.R. process, which includes the following components:

- A. Require a Process-Two approval for all S.C.R.'s within the Coastal Zone.
- B. Maintain the current Process-One approval for all S.C.R.'s outside the Coastal Zone, and continue to send S.C.R. applications (for both Process-One and Process-Two) to the affected Community Planning Group.
- C. When reviewing S.C.R. applications, staff will utilize the "Guidelines for Measurement of Substantial Conformance Review" as contained within the Development Services Department's Information Bulletin 500.

Community Planners Committee Recommendation:

The Community Planners Committee recommendation (see Attachment 3-Memo from Dave Potter) is to require a Process-Two Approval for all S.C.R. requests. This change would require amendments to Municipal Code Section 126.0112 (see Attachment 1-Draft strike-out/underline Ordinance). CPC also recommended that the City publish specific criteria for determining if modifications substantially conform to the approved permit/project. Staff believes this recommendation has been incorporated into Information Bulletin 500 (see Attachment 2).

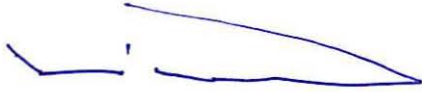
CONCLUSION:

The fundamental purpose of the S.C.R. process is to evaluate minor modifications to previously approved discretionary projects that have no material impact beyond the project's boundaries. Because these types of applications are typically minor in scope and generate no new impacts, a Process-One decision is the most practical, efficient, and effective review process.

Staff does not believe that elevating the S.C.R. (outside the Coastal Zone) to a Process-Two is warranted given the following: 1) Over the past 6-7 years there is little evidence of any fundamental problem with the current S.C.R. process. 2) Since the Grand Jury Reports were issued, the S.C.R. process has improved with staff training and with the distribution of S.C.R. applications to the affected community planning group. 3) Imposing supplemental regulatory requirements on the S.C.R. process will generate financial impacts for applicants, and will necessitate longer processing times. 4) The publication of written review guidelines (within Information Bulletin 500) will help achieve staff consistency in S.C.R. determinations and will clarify in advance (for applicants and the public) how S.C.R. applications will be reviewed.

For these reasons City staff is recommending no changes to the current Substantial Conformance Review process.

Respectfully submitted,



Mike Westlake
Program Manager
Development Services Department

Attachments:

1. Draft Ordinance Amendment.
2. Information Bulletin 500 with Attachment A - Guidelines for Measurement of Substantial Conformance Review.
3. Memorandum from Dave Potter to Community Planners Committee.

STRIKEOUT ORDINANCE

OLD LANGUAGE: STRIKEOUT
NEW LANGUAGE: UNDERLINE

ORDINANCE NUMBER O-_____ (NEW SERIES)
ADOPTED ON _____

AN ORDINANCE OF THE COUNCIL OF THE CITY
OF SAN DIEGO AMENDING CHAPTER 12, ARTICLE 6,
DIVISION 1, BY AMENDING SECTION 126.0112, OF THE
SAN DIEGO MUNICIPAL CODE, ALL RELATING TO
MINOR MODIFICATIONS TO A DEVELOPMENT PERMIT.

§126.0112 Minor Modifications to a Development Permit

A proposed minor modification to an approved *development permit* may be submitted to the City Manager to determine if the revision is in *substantial conformance* with the approved permit. If the revision is determined to be in *substantial conformance* with the approved permit, the revision shall not require an amendment to the *development permit*. ~~Within the Coastal Zone,~~
Any substantial conformance determination shall be reached through a Process Two review.



THE CITY OF SAN DIEGO

MINIMUM STANDARDS FOR

Substantial Conformance Review

CITY OF SAN DIEGO DEVELOPMENT SERVICES
 1222 FIRST AVENUE, MS 302, SAN DIEGO, CA 92101-4101
 CALL (619) 446-5300 FOR APPOINTMENTS AND (619) 446-5000 FOR INFORMATION

INFORMATION
BULLETIN

500

JULY 2009

The goal of Substantial Conformance Review (SCR) is to determine if the proposed project is consistent and in conformance with a previously approved permit. This includes a review of the revised project against the approved exhibits, permit conditions, environmental documentation, applicable land use policies and the public record for the prior permit. Staff will recommend approval of the modified project (utilizing the guidelines for measurement - see Attachment A) if the change falls within the parameters of the prior approval. A Substantial Conformance Review decision is either at staff-level (Process 1) or is a decision by staff that requires input from the Community Planning Group and is appealable to the Planning Commission (Process 2). (Please note that all Process 1 SCR applications are distributed to the affected community planning group as a courtesy notification). If the only prior discretionary action, however, was a tentative map or vesting tentative map and a final map for the project has been approved, then this service is not available. For Wireless Communication Facility SCR's see information bulletin 536.

I. SUBSTANTIAL CONFORMANCE REVIEW -PROCESS 1

Unless otherwise stated as a permit condition or as required by the Municipal code, Substantial Conformance Review is an optional service available to customers who are proposing to modify their project after a discretionary permit has been approved by the City. This optional service is offered to allow customers to provide only the information needed to make a conformance determination without having to go to the expense of preparing complete construction documents. The process does not include a review for conformance with other City regulations, which is performed when an application for a construction permit approval such as a building, grading, or public improvement permit is made.

Instead of a SCR, customers may choose to include their project changes as part of a complete construction permit application (building permit, grading permit, public improvement permit, etc.). Staff will review the project change for conformance with the prior permit as part of the process of checking the plans against applicable regulations. If the project changes are not deemed to be in conformance with the previously approved discretionary permit, minor to

Documents referenced in this Information Bulletin

- [Information Bulletin 512](#), How to Obtain Public Noticing Information
- [Information Bulletin 536](#), Submittal Requirements and Procedures for Wireless Communication Facilities
- General Application, [DS-3032](#)
- Deposit Account/Financially Responsible Party, [DS-3242](#)

significant project redesign or an amendment to the previously approved permit may be required. The customer makes the choice to risk a full construction permit submittal or to opt for the more tailored SCR service.

II. SUBSTANTIAL CONFORMANCE REVIEW -PROCESS II

Some prior approvals require Substantial Conformance Review to go through a Noticed Decision process (Process 2). This higher decision process is either a condition within the development permit itself or is required by the Municipal Code (e.g., SCR's within the Coastal Overlay Zone).

III. SUBMITTAL REQUIREMENTS

Phone (619) 446-5300 to schedule a submittal appointment for SCR. At this appointment, provide the information in the quantities shown below. You may provide one copy of everything for a determination by staff of the final number of copies that would be required as the quantities may vary depending upon the magnitude of the change:

A. Provide twelve (12) copies of the following:

1. A letter detailing the modifications being proposed to the project that was previously approved;
2. The final approved permit and resolution(s) of the subject permit;
3. The approved Exhibit A drawings and documents that are being affected by the proposed project modifications.
4. Marked up Exhibit A drawings and documents or new drawings at the same scale as the approved exhibits that

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 Upon request, this information is available in alternative formats for persons with disabilities.

clearly show and highlight the proposed project modifications.

- 5. Plans with 6 sheets or less may be bound (stapled) and folded to 8 1/2" x 11" with the Title Block facing out. Plans with 7-19 sheets must be folded separately to 8 1/2" x 11" with the Title Block facing out. Plans with 20 or more sheets may be bound (stapled) and do not need to be folded.

B. General Application (DS-3032) Part I

C. Deposit Account / Financially Responsible Party (DS-3242)

- D. For SCR's in the Coastal Zone** or when a Process 2 SCR is required by a previously approved development permit, a Public Notice Package is required. See Information Bulletin 512, "How to Obtain Public Noticing Information," for more details.

IV. FEES

The following fees/deposits are required at the time of project submittal with the exception of the Fire Plans Officer Review Fee (applicability of this fee to be determined during project review).

A. General Plan Maintenance Fee

This fee is charged for projects with plans and documents to be reviewed for compliance with the general plan or land development code provisions.

General Plan Maintenance Fee \$ 88

B. Mapping Fee

This fee is charged when there are plans, drawings, maps or other geographical documents utilized for project review.

Mapping Fee \$ 10

C. Discretionary Project Close Out Fee

This fee is charged to pay for plan processing, notarizing documents, permit recordation, and archiving the project file after final hearing or appeal is completed.

Discretionary Project Close Out Fee... \$ 500

D. Fire Plan Review Fee

This fee is charged for the Fire Plans Officer review of most development permit projects.

Fire Plans Officer Review Fee \$ 300

E. Substantial Conformance Review Deposit

A Trust Fund account is established with an initial deposit. This initial deposit is drawn against to pay for the review of your project. During project review, the Financially Responsible Party (as identified on the Deposit Account / Financially Responsible Party, DS-3242) will receive a monthly deposit statement reflecting the charges made against the account.

The Financially Responsible Party may receive invoices for additional deposits for subsequent reviews of the project in order to maintain the minimum balance as shown below. The payment of this invoice will be required in order to continue processing your project. At the end of the project, any remaining funds will be returned to the Financially Responsible Party.

Initial Deposit \$2,000

Subsequent

Review/Minimum Balance..... \$1,000

ATTACHMENT A

GUIDELINES FOR MEASUREMENT OF SUBSTANTIAL CONFORMANCE REVIEW

BACKGROUND:

At the time a discretionary project is approved by the City, it is acknowledged by both the Development Services Department and the developer that the plans being approved are "conceptual plans." The plans are of sufficient detail to show department staff and citizens what the project will be and how it will look. However, the developer, because of cost and the uncertainty of whether the project will be approved, does not prepare construction documents for the discretionary review phase of the project. After a project is approved, a developer may find it necessary to modify the project. These guidelines give some guidance as to the limits that such projects can be modified without requiring a formal amendment to the project.

A FINDING OF SUBSTANTIAL CONFORMITY CANNOT BE MADE IF CHANGES OR MODIFICATIONS TO A PROJECT ARE INCONSISTENT WITH FACTORS OR ISSUES THAT WERE SPECIFICALLY DISCUSSED AND/OR ADDRESSED BY STAFF AND/OR THE DECISION-MAKER AT A PUBLIC HEARING.

GENERALLY, THE MORE SIGNIFICANT THE CHANGE, THE MORE DIFFICULT IT WILL BE TO DETERMINE SUBSTANTIAL CONFORMITY. CONVERSELY, IT CANNOT BE ASSUMED THAT SEEMINGLY MINOR CHANGES WILL BE FOUND IN SUBSTANTIAL CONFORMITY IF IT WAS A SPECIFIC PROJECT ISSUE IDENTIFIED WITHIN THE PROJECT FILE, STAFF REPORT, RESOLUTION OF APPROVAL, AND/OR IN THE PUBLIC HEARING MINUTES.

DETERMINATION:

Following are issues to be considered and evaluated when reviewing a Substantial Conformity Review Application.

Land Use – No significant change in land use (permitted uses) from that which was approved can be found to be in substantial conformity to the original permit. Unless the permitted uses section of permit specifies uses permitted by the underlying zone, only those land use categories identified on the permit are to be allowed.

Intensity of Development – No increase in density for residential projects may ever be granted under substantial conformance. A minor decrease in the residential density of a project may be considered, so long as it remains consistent with the minimum designations of the adopted policies and plans and does not affect the sizing of public facilities within the Community. The issues of concern here are consistency with the environmental document and permit which typically only analyze and permit maximum densities, and the ability to size and finance public facilities based on the approved density.

For commercial and industrial projects, no increase in Floor Area Ratio (FAR) or coverage maybe granted inconsistent with a permit or exhibits. Only a minor decrease in FAR or coverage (generally no more than 10 percent—so long as it does not affect the sizing of public facilities within the Community) can generally be found to be in substantial conformance.

The wholesale substitution of one type of housing product for another (e.g., going from an approved multi-family apartment building to an attached town-house design) is not generally in substantial conformance. Such a change is quite complex and would affect several other of the design issues discussed here.

Site Design – Site design changes can run the gamut from minor siting changes on a building to completely reorienting the footprint of one or more buildings or relocating parking, driveways, land-

scaping or some other approved element of a project.

This can be the most difficult of issues to evaluate. It could be possible to reverse the footprint of an entire shopping center and have no adverse results however doing the same for a single-family residence would adversely affect adjacent properties and be considered inappropriate without an amendment to the permit.

Site design changes proposed for an approved project should not significantly alter nor affect the other issues discussed here. Coordination of SCR review with other departments/divisions is generally necessary when there are site design changes proposed. Consultation with the Community Planning Group is critical in significant site design changes to ensure that the expectations of the Community during the original approval process are upheld. In many cases the modified site design is a result of more refined site studies, construction plans or specific tenant needs.

Parking/Circulation – Typically, only minor changes to an approved project's parking and traffic circulation should be considered or approved under substantial conformity review.

Architecture – Review of proposed changes to the architectural style of an approved project should weigh the significance that the department and/or the decision-maker(s) placed on the appearance/architectural style of the project when it was approved. Where findings of neighborhood compatibility were required to be made, even minor changes to architectural elements or materials could be considered significant. Though the City does not regulate private views, increasing the height of a flat roof structure to a gabled roof could affect neighbors and lead to some controversy over why the design change occurs after the public hearing. The overriding goal should be that the modified plans result in a project that is "better than or equal to" the conceptual plans that were approved. This is an aesthetic determination, not an economic one.

Accessory Uses/Structures – Proposed Changes to a project's accessory uses or structures need to be reviewed within the context of the significance given to them in the course of the project review and approval process. Applicants cannot propose an Olympic size swimming pool and then convert the area to an open grassy space. However, substituting facilities of a similar nature and size may be acceptable. The addition of accessory uses/structures needs to consider whether the use or structure is truly accessory in nature to the approved use and project design and how it physically fits into the project.

Environmental Documents

No projects can be found to be in substantial conformance if it exceeds the elements described and analyzed in an environmental document. Increased density, grading, traffic, biological impacts, etc., needs to be closely scrutinized and evaluated.

Landscaping

The overriding principle is that wholesale modification in the overall amount of landscaping should not be approved. Minor changes may be appropriate but these must be viewed in the context of the full landscape program for the project. Eliminating significant amounts or types of landscape treatment only because of the cost is not substantial conformance. However, the replacement of landscape materials with drought tolerant plants may be allowed if the resulting landscape complies with the regulations of the San Diego Municipal Code.

Conditions

Conditions contained within a permit cannot be changed through substantial conformance review. Substantial conformance review can be used to make minor changes to an approved project or facility as described in a permit or shown on an Exhibit "A" as long as those changes comply with all conditions of the permit. Any changes that are inconsistent with permit conditions are not allowed.