



## **Staff Report**

**Date:** October 11, 2016

**To:** Mayor and City Council

**From:** Valerie J. Barone, City Manager

**Reviewed by:** Victoria Walker, Director of Community and Economic Development

**Prepared by:** Frank Abejo, Principal Planner  
[Frank.abejo@cityofconcord.org](mailto:Frank.abejo@cityofconcord.org)  
(925) 671-3128

**Subject:** **Designation of Council's Housing & Economic Development Committee for appeals of staff determination that a design modification to the approved Veranda Shopping Center project is major.**

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### **Report in Brief**

On August 2, 2016, the City Council adopted Resolution No. 16-64 approving a Use Permit, Tree Removal and Design Review application by CenterCal Properties to construct the Veranda Shopping Center project located on Diamond Blvd. A condition of approval for the project requires the creation of a City Council Committee of two members to hear appeals by the project owner when staff deems proposed design modifications from the applicant to be major and the applicant believes the modification to be minor.

### **Recommended Action**

Designate the Housing and Economic Development Committee (HED) as the reviewing body to hear an appeal from the project owner regarding a staff determination that a proposed design modification to the Veranda Project is major.

### **Background**

The City has standardized Conditions of Approval that are applied to projects based on their scope and entitlement approval(s). A standard Condition of Approval applied to projects involving new construction addresses how modifications to the approved plans are reviewed. This Condition of Approval reads as follows:

*“Minor modifications that are found to be in substantial conformance with the approved plans such as colors, plant materials, or minor lot line adjustments, may be approved administratively. Major modifications shall be approved by the applicable decision making body.”*

The decision-making body (review authority) has the discretion to add, omit, and modify a project's Conditions of Approval. As the review authority for the Veranda Project, the City Council approved a request by CenterCal Properties on an alternate method for reviewing post-approval design modifications to the Veranda Project. The alternate method is outlined by Condition of Approval #6 which states the following:

*“The following Exhibits, date stamped received by the City of Concord on July 11, 2016 (Master Sign Program) and July 14, 2016 (civil, site, architectural, and landscape plans) are approved and shall be incorporated as Conditions of Approval. Minor changes, which may include, without limitation, changes to building materials, colors, plant materials, or architectural details that are found to be of equal or better quality than the approved plans may be approved by staff (and upon consultation, as determined appropriate by staff, with the third-party architect retained by the City) as minor modifications. If the applicant seeks to modify approved plan(s), then staff (and upon consultation, as determined appropriate by staff, with the third-party architect retained by the City) shall make a determination as to whether such modification(s) are minor. If these are determined to be minor in nature (either by staff or upon determination of the City Council sub-committee, as noted further below), then staff may approve such change(s) administratively. If staff determines that the proposed modification(s) are major, then the applicant may appeal this determination to a sub-committee made up of two (2) City Council members, whose decision will be final. If the proposed modification(s) are determined to be major, then the applicant will be required to obtain approval of said changes from the appropriate decision making body in accordance with applicable CMC provisions.*

*[Exhibits Table Omitted on purpose]*

*The Project shall be consistent with the above-referenced approved plans. Provided, however, that minor modifications may be approved by staff (and upon consultation, as determined appropriate by staff, with the third-party architect retained by the City). If the proposed modification(s) are determined to be major (either by staff or a sub-committee of City Councilmembers, as discussed above), then the applicant will be required to obtain approval of said changes*

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*from the appropriate decision making body in accordance with applicable CMC provisions.”*

### **Discussion**

The Council Committee assigned to the Veranda Project will be authorized to direct Planning staff to process design modifications it deems minor through a staff review process. Major design modifications will be reviewed in accordance with Concord Municipal Code Section 18.505.030(D) which states major changes shall be considered by the appropriate decision-making body. The City Council is the decision-making body for this project and is authorized to approve major design modifications. The Committee is authorized to determine if a design modification is major, and thereby must move to City Council for approval. The City Council may decide to approve the modification or to refer the matter to the Design Review Board for a recommendation to the City Council. In accordance with California law, the Committee meetings must be duly noticed and open to the public because of the Committee's decision-making authority.

CenterCal Properties has filed permits and construction documents on all buildings approved for the project. Planning staff has completed its first plan check of the Wholefoods 365 building, which is CenterCal's immediate construction priority. Modifications were made to the Wholefoods 365 building that staff has deemed minor and intends to approve administratively. It is staff's expectation that the plan check for the Wholefoods 365 building will help expedite the review of other buildings since there will be resolution on design issues that are common to the project buildings.

Given the subject matter, staff recommends the Council designate the Housing and Economic Development (HED) Committee as the reviewing body should CenterCal disagree with a staff determination that a proposed design change is major. Staff does not anticipate any conflicts with the HED Committee's regular scheduled meetings that typically occur on the 4<sup>th</sup> Monday of each month. However, special meetings may, if needed, be requested due to circumstances related to CenterCal's expedited construction schedule.

### **Public Contact**

The City Council Agenda was posted.