



Environmental Planning Commission

***Agenda Number: 6
Project Number: 1000264
Case Number(s): AC-09-07,07EPC-40097
April 8, 2010***

Staff Report

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| <i>Agent</i> | Timothy Flynn-O'Brien |
| <i>Applicant</i> | West Bluff Center LLC |
| <i>Request(s)</i> | Remand from City Council Site Development Plan for Building Permit Amendment |
| <i>Legal Description</i> | Tracts 10, 11 and 12, West Bluff Center |
| <i>Location</i> | Coors Blvd. NW, north of Ouray Rd. |
| <i>Size</i> | Approximately 6 acres |
| <i>Existing Zoning</i> | C-2 (SC) |
| <i>Proposed Zoning</i> | no change |

Staff Recommendation

APPROVAL of 07EPC-40097 pursuant to AC-09-07, based on the Findings beginning on Page 10 and the Conditions of Approval on Page 15.

Staff Planner

Carol Toffaleti, Planner

Summary of Analysis

This report is associated with: staff reports for the remand dated Oct. 15, 2009, Dec. 16, 2009, and Feb. 18, 2010 (voided by staff due to errors); and the full record of AC-09-7, which includes staff reports on the SDPBP amendment dated Jan. 17, 2008 and Feb. 19, 2009

The City Council's remand is pursuant to the appeal by the West Bluff and Grande Heights NAs and the West Side Coalition of the EPC approval of a site development plan for building permit amendment (AC-09-7, 8/4/2009, 07EPC-40097, 2/19/2009). The site forms the middle part of the West Bluff shopping center. The request was to add a tower to an existing building on the site, with a belfry and building-mounted signs (electronic display panels). An existing free-standing sign would be removed. The site is in the Established Urban Area of the Comprehensive Plan, West Side Strategic Plan and Coors Corridor Plan.

The City Council's remand included three main findings, whether: the C-2 regulations permit the EPC to approve exceptions for sign height and size; the belfry tower with signs is exempt from height restrictions under the Zoning Code; and the EPC granted an exception to sign size and, if so, how it relates to the evidence presented.

The City Council's remand has been addressed in staff's analysis and revised findings. 1) A Declaratory Ruling by the Zoning Enforcement Officer is in effect, that allows signs on shopping center sites in commercial zones to be granted exceptions by the EPC. The elevation of Coors is a special situation that justifies higher signs. 2) The height of the tower was reevaluated and determined to comply with regulations of the Coors Corridor Plan (CCP), without a height exemption under the Zoning Code. 3) The size of the proposed signs was reevaluated in light of zoning regulations, which showed that the EPC had granted a size exception for the northwest sign only. Staff finds that the elevation of Coors does not justify an exception for size, and recommends that the size be reduced to 86 sf to bring the signs into greater compliance with the CCP.

In addition, staff reanalyzed the site plan for building permit amendment in light of EPC actions since 2/2009 and the intent of the CCP, and is recommending updates and additional conditions of approval, primarily to mitigate their distraction to motorists.

BACKGROUND

Introduction and Context

The remand from City Council concerns EPC approval of an amended site development plan for Tracts 10, 11 and 12, West Bluff Center, a site of approximately 6 acres, zoned C-2 (SC), located on Coors Blvd. NW, north of Ouray Rd.

The subject site is in the Established Urban Area of the Comprehensive Plan and within the boundaries of the West Side Strategic Plan and the Coors Corridor Plan (1984, amended through 2003), which established a Design Overlay Zone.

The subject site is the middle portion of the West Bluff shopping center, which extends from Quail Road on the north to Miami Road on the south, and from Corona Dr. on the east to the frontage road of Coors Blvd. NW on the west. South of Ouray, the roadway immediately adjacent to the west edge of the shopping center consists of the frontage road off westbound I-40 joined by a lane off northbound Coors Blvd. that provide access to Ouray. North of Ouray, the frontage road ends at a right-hand site drive into the shopping center just beyond the subject site.

Coors Blvd. is elevated over Ouray Rd. and its apex reaches approximately 28 ft above grade near the southwest corner of the site. Immediately adjacent to the site, Coors has 4 lanes in each direction and soon widens to 6 northbound lanes to allow left-hand turns onto Quail Road.

The signage proposal approved by the EPC was to replace a free-standing, multi-tenant sign at the west edge of Tract 10 with a tower connected to Building 7, also located on Tract 10. The tower would be 50 ft high and include a belfry and two electronic display panels, one facing northwest and one facing southwest. Each sign would have a sign face area of 125 sf and a maximum height of 40 ft. The top of the signs would be approximately 12 ft above elevated Coors Blvd., and 8 ft above the jersey barrier along the edge of it. The west corner of the tower would be at a horizontal distance of approximately 56 ft from elevated Coors.

History

The West Bluff shopping center has a long history of EPC and DRB actions, administrative amendments and appeals. The shopping center contains approximately 40 acres and is governed by two site development plans approved by the EPC. The north and south portions of the shopping center, zoned SU-1 for C-2 uses and C-2, are governed by a site development plan with project #1000188 that was signed off at DRB in 2000. In a significant appeal action in 2001 (ref. AC-01-14 and AC-01-15), the City Council found that the middle portion of the shopping center, i.e. the subject site, is also subject to the shopping center regulations of the Zoning Code and should be considered part of the West Bluff shopping center. A site development plan for this middle portion was eventually approved under project #1000264 by the EPC and signed off at DRB in 2003.

The origins of the signage proposal go back to 2006, when the applicant requested variances to the Coors Corridor Plan for higher and larger free-standing signs in the middle and southern parts of the shopping center, because Coors Blvd. was elevated over Ouray Rd. after approval and development

of the shopping center. The Zoning Hearing Examiner (ZHE) denied the requests because he found that approval would lead to a possible proliferation of requests for variances and would place other businesses at a disadvantage, and that the subject property was not exceptional. After appeals, remands and discussion between the City, applicant and neighborhood associations, the City decided, with the consent of the interested parties, that the appropriate process for considering the requests was through the EPC.

The original EPC applications submitted for the January 17, 2008 hearing consisted of amendments to the two site development plans for the shopping center and text amendments to the Coors Corridor Plan. There was neighborhood support and opposition to the requests. The cases were deferred by the EPC, who directed the applicant to consider alternative locations and designs, that focused on making the shopping center a destination, and to revise their proposal with input from the neighborhood associations. During 2008, the applicant requested four deferrals before submitting a revised proposal, which was approved on February 19, 2009. The revised proposal was limited to amending the site development plan for the middle portion of the center and no longer required a text amendment to the Coors Corridor Plan, because it did not involve a free-standing sign. As a result, three of the original cases (#1000264, 07EPC-40102 and #1000188, 07EPC-40095, -40101) were withdrawn.

The EPC approval of 07EPC-40097 was appealed by the Grande Heights NA, West Bluff NA and the Westside Coalition of NAs on the grounds that the EPC erred in applying city plans, in its findings and by acting arbitrarily or abusive of their discretion (AC-09-07). The appeal was heard by the Land Use Hearing Officer (LUHO) on June, 4, 2009. The City Council took no action on the LUHO's recommendation to affirm the EPC's decision. Instead, the City Council remanded it to the EPC on August 3, 2009 with no deadline specified for EPC action. On August 28, 2009, the applicant appealed the City Council's remand in District Court.

Update

The remand was originally scheduled for the October 15, 2009 EPC hearing. It was deferred twice at the applicant's request and with the appellants' consent. In February 2010, it was deferred because of errors in the staff report that resulted in its being voided.

At this time, the litigation in District Court is still pending and no stay on the EPC process has been handed down by the judge. Mediation is not occurring because the City and interested parties did not reach agreement as to the proposed nature of the mediation session.

To avoid further delay in addressing the City Council's findings and in the development review process, staff is recommending that the EPC rehear and make a decision on the site development plan for building permit amendment per §14-17-4-4(C)(2) of the Zoning Code.

Regulatory Framework

The site development plan amendment is governed by the following definitions and regulations in the Zoning Code and the Coors Corridor Plan:

Zoning Code

- Definitions - §14-16-1-5

- Facade
- Height
- Sign area (ref. (2))
- Sign, Building-Mounted
- Sign Height
- Sign, Wall
- C-2 Community Commercial
 - §14-16-2-17 (A)(10) Sign, on-premise
 - §14-16-2-17 (C) Height, ref. to O-1 zone §14-16-2-15 (C)
- General Sign Regulations/Regulations applicable to signs in non-residential zones - §14-16-3-5 (D)(1) & (3) apply to general illumination and change of message or picture respectively.
- Area lighting - §14-16-3-9(B) controls off-site luminance.
- Supplementary Height, Area and Use Regulations - §14-16-3-3 (A)(1)(a) Height Regulations/Belfries
- SC Shopping Center Regulations - §14-16-3-2(C)(1) Procedure: “Approval and revision of plans is the same procedure as for SU-1 plans”.
- SU-1 Special Use Zone - §14-16-2-22(A) Procedure.
- Overlay Zones –§14-16-2-28
- Appeal - §14-16-4-4
 - (C)(2) “The City Council may remand an appeal to the Planning Commission,.....for rehearing and decision if it finds that rehearing would be likely to serve public policy and resolve the appeal. If the City Council remands an appeal to the Planning Commission,...the Council shall state key findings of fact on which that action is based.”
 - (C)(3) “The Planning Commission,...shall hold a public hearing and make a decision relative to all appeals ...remanded to it by the City Council as set forth elsewhere in this Zoning Code.”

Coors Corridor Plan (Design Overlay Zone)

- Policy 4.b.2 Building setback, height and bulk
 - Design Regulation B.1 Height and Bulk (p. 89)
- Policy 4.b.9 Site lighting (p. 98, as amended by R-458, 1989 at the front of the plan)
- Policy 4.d.1 Signage (p. 112)
 - Design Regulation 2. PROHIBITED SIGNS:

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- Design Regulation 4. ILLUMINATED SIGN OR ELEMENTS
 - Design Regulation 6.
 - MAXIMUM NUMBER OF ITEMS PER PREMISE FRONTAGE
 - LIGHTING OF SIGNS

THE REMAND

It is staff's understanding that the EPC has some discretion over the scope for rehearing the case, but must at minimum respond to the questions and issues raised by the City Council in their remand findings.

City Council Findings (AC-09-7, 8/4/2009):

1. Remanding this matter to the EPC will likely serve public policy and resolve the appeal

The remand is likely to serve public policy by revisiting the analysis of the proposal against applicable planning and zoning regulations, making corrections where appropriate, and by clarifying how the EPC has interpreted these policies and regulations, including the scope of their authority. The remand also provides an additional opportunity for interested parties to express their views at a public hearing of the EPC. Nevertheless, it may not resolve the appeal.

Note that, in addition to the appeal by the Neighborhood Associations and Westside Coalition, the applicant has appealed the City Council's remand to District Court and this matter is still pending.

2. The EPC needs to specifically resolve the threshold issue of whether under the C-2 Regulations, §14-16-2-17(A)(10)(f)(2), a determination that there is a "special situation" permits the EPC to approve the requested exceptions as to height and size or whether the EPC is limited to approving exceptions as provided for in the Shopping Center Regulations, § 14-16-3-2. The EPC did not resolve this issue.

§14-16-2-17(A)(10)(f)(2) in the C-2 regulations states: "Any exceptions allowed for shopping centers, in order to provide adequate signing in special situations, shall be as provided in §14-16-3-2 of this Zoning Code [Shopping Center Regulations]. Such a sign exception must be specifically defined in the Planning Commission resolution."

The Shopping Center (SC) regulations do not include references to "special situations" or "sign exceptions". Leaving aside the Large Retail Facility Regulations that do not apply to this proposal, the only SC regulation pertinent to signage is limited to free-standing signs, but this does not apply to the proposed wall signs (§ 14-16-3-2 (B)(4)). Staff believes that it is the procedure specified in §14-16-3-2(C)(1), which refers to the procedure for SU-1 site plans, that gives the EPC discretion to find there is a special situation on a particular shopping center site that may justify a departure from the strict application of the regulations of an underlying zone. This is consistent with a Declaratory Ruling dated 9/8/1987 that was provided to staff by Code Enforcement (see att.). It states that on-premise signs on shopping center sites in C-1, C-2 and C-3 zones may be granted exceptions by the EPC to the sign regulations that usually apply in those zones. Declaratory Rulings by the Zoning Enforcement Officer are authorized and issued

pursuant to §14-16-4-8 of the Zoning Code. Code Enforcement has confirmed that the Ruling is still in effect.

There are also other indications in the SU-1 regulations that the EPC is granted considerable discretion in approving and amending site plans, including signage:

- §14-16-2-22 (A) in the SU-1 zone establishes the EPC's authority to review site development plans and changes to them;
- Signage is mentioned in 23 of the 35 types of SU-1 zones under §14-16-2-22 (B). In approximately 1/3 of these SU-1 zones, signs are "as permitted and regulated by the Planning Commission".

The EPC defined the exception and the rationale for the justification in Finding 11 in the February 2009 Notice of Decision. Staff recommends citing the Declaratory Ruling in the finding and explaining the reasons for the special situation in more detail.

However, staff does not consider that the elevation of Coors justifies an exception to size (see p. 7 in this staff report).

3. The EPC needs to consider what constitutes a "belfry" so as to be exempt to height restrictions under the Zoning Code. In particular, the EPC needs to consider whether the use of the structure for purposes other than to house a bell impacts whether the structure is a belfry. The EPC did not resolve this issue.

At the January 2008 hearing, the EPC had instructed the applicant to consider an alternative design that would landmark the shopping center. In February 2009, the EPC accepted the solution of a tower with a belfry and wall signs, as explained in Finding 8.a of the Notice of Decision. The term "belfry" is not defined in the Zoning Code, The Zoning Dictionary (on-line, Lehman & Assoc.) or "A Planner's Dictionary" (2004). Webster's Ninth Collegiate Dictionary (1987) defines it as "1. a bell tower, especially one surmounting or attached to another structure" and defines "bell tower" as "a tower that supports or shelters a bell". To avoid confusion about the structure's status in zoning terms, the proposed structure could be considered an "ornamental tower" with a "belfry", since both types of structures are exempt from height regulations in the Zoning Code (§14-16-3-3 (A)(1)(a) & (f)).

Code Enforcement has informed staff that the fact the tower with a belfry is also used to support signs would not affect the height exemption for the structure. Sign height is regulated separately under the Zoning Code.

Furthermore, the height of the tower is actually within the limits allowed in the Coors Corridor Plan (CCP), without considering either height exemptions in the Zoning Code for belfries and ornamental towers, or the fact that the tower is attached to a building and constitutes less than 10% of the overall floor area (see "height", as defined in the Zoning Code). Considering the tower on its own, the height is 50 ft, which accounts for the sloping roof per the definition of "height" in the Zoning Code. This is 2 ft less than the 52 ft from grade to the peak of the roof called out in the elevations (see Diagram B.3). The CCP refers to height limitations in the

underlying zone, except at the front yard setback line on Coors Blvd. (Policy 4.b.2, Design Regulation B.1, p. 88).

The regulations of the underlying C-2 zone refer to O-1 regulations for building height (§14-16-2-15 (C)). The proposed height is allowed, because the tower is not within 85' of a lot zoned for houses and it falls within a 45° angle plane from the north boundary of the site and within 60° angle planes from the centerline of Ouray Rd. and Corona Dr. to the south and east. On the Coors frontage, it falls within a 60° angle plane from the setback line or the right-of-way boundary. The distance between the west corner of the base of the tower and the ROW scales at 31 ft, resulting in a maximum allowable height of 53.7 ft..

In conclusion, the proposed tower addition does not actually require a height exemption. Staff recommends a finding stating that it complies with height regulations of the Coors Corridor Plan.

4. The EPC needs to explain whether it did in fact grant an exception to the size of the proposed signs and if so how the need for that exception relates to the evidence presented. The EPC did not explain the justification for its decision on this issue.

Finding 11 in the 2009 EPC Notice of Decision states that an exception was warranted for the size as well as the height of the signs, because the construction of the Coors/I-40 interchange adversely affected the businesses on the site by severely limiting their visibility from Coors Blvd. Staff believes that it would clarify the existing condition to state that Coors Blvd. is elevated over Ouray Rd..

The need to grant an exception was based on information in the staff report that both signs were larger than normally allowed under the C-2 regulations. Staff re-analyzed how the proposed signs comport with the C-2 regulations, in consultation with Code Enforcement. The corrected calculations are:

- Per § 14-16-2-17(A)(10)(c)2.b, a building-mounted sign on premises where there is a free-standing on- or off-premise sign shall not exceed one half of 30% of the area of the façade to which it is applied, i.e. 15%. This applies because, although the existing 26' high free-standing sign on Coors will be removed as part of the action, a 5' high free-standing monument sign on Corona would remain on the subject site. The monument sign advertises one of the businesses on the subject site. In addition, City Council in a previous action has required that all parts of the shopping center be considered as one, despite the fact that it is governed by two different site development plans. Three free-standing signs currently exist in the other site plan area along Coors (#1000188), and a fourth was demolished for roadworks but is "approved" and could be reinstated by the property-owner.
- Each proposed building-mounted sign is 125 sf. Each façade of the tower is 576 sf.
- The basis for calculating the façade area for the sign facing northwest is the façade of the tower only. Therefore: $125 \text{ sf} = 576 \text{ sf} \times 22\% (> 15\%)$. The sign on the northwest facade of the tower does not comply. The allowable sign face area is 86.4 sf.
- The southwest façade of the tower is within 45° of the west face of the building. There is an existing projection at the southwest corner of the building that is also within 45° of the west

face. Total façade area, as defined in the Zoning Code, is approximately: 576 sf + (18' x 18' west facade) + (23' x 25' northwest facade) = 1,475 sf. The total sign face area, including the proposed sign and two existing wall signs, is approximately: 125 sf + 49 sf + 25 sf = 199 sf. 199 sf = 13.5% of 1,475 sf. (< 15%). The sign on the southwest facade of the tower complies.

The EPC granted an exception for the size of the sign on the northwest facade of the tower only, which is reflected in a finding.

Staff considers that the greater height of the signs may be justified by the elevation of Coors Blvd., but not the greater size of the non-compliant sign, for the following reasons:

- There are already four approved free-standing signs along Coors. Although one of them, a multi-tenant sign, is not very visible from Coors because it is mid-way between Ouray and Quail Road near a section of the roadway that is somewhat elevated, there are free-standing signs at either end of the shopping center which are visible from the arterial. The fourth free-standing sign, demolished for roadworks, could presumably be rebuilt in the southern part of the shopping center. In that case, a future applicant could reasonably expect that a higher sign would also be acceptable to the City in this location, since it would be near the apex of the elevated section of roadway.
- The CCP limits the size of free-standing signs to 75 sf, whereas the proposed signs would be 125 sf. One could reasonably argue that the proposed tower with signs, and situated along the road frontage, is serving a similar function to a free-standing sign, even though it is attached to a building.
- Finally, the technology for electronic display panels creates very visible messages and allows a single sign to advertise a multiplicity of tenants in succession, without sacrificing any sign face area for each tenant's message. This contrasts with the free-standing sign that is being removed, which tenants had to share.

There is another aspect of size that comes into play. If the sign on the northwest façade was brought into compliance, the two signs on the tower would be of different sizes (86 sf and 125 sf), which would not be visually appealing. This is especially important since the site is in the CCP Design Overlay Zone. The purposes of its signage regulations include: "sensitive to the goals for the design and character of the Coors Corridor area" and "aesthetically pleasing" (p. 112). Staff believes that reducing both sign face areas to 86 sf would bring the signage into greater compliance with the CCP and recommends a condition accordingly.

SITE DEVELOPMENT PLAN FOR BUILDING PERMIT ISSUES

The proposed electronic display panels were some of the first to be reviewed and approved by the EPC. Since February 2009, the EPC has reviewed several site development plans that include electronic display panels and have used conditions of approval to address the technology, purpose and context specific to each proposal. Staff believes that it is reasonable to take another look at the

previous conditions of approval to ensure that they are consistent with the EPC's evaluation of more recent proposals and comply with applicable regulations.

Note 11 on Sheet C-2 of the site development plan requires that all building signage comply with the Coors Corridor Plan. Staff notes that this includes the following regulations, which are particularly relevant to electronic display panels:

Policy 4.d.1 Signage

Design Regulation 4: "No illuminated sign, ..., may turn on or off, or change its brightness."

For clarity, a condition is recommended to control the signs' brightness.

Design Regulation 6 – LIGHTING OF SIGNS: "...signs which are internally illuminated may be used provided that:

- there is no glare on the street or upon adjacent property; and
- the light does not distract motorists."

Staff believes that the condition to control brightness recommended above will help mitigate distraction for motorists.

Code Enforcement informed staff prior to the February 2009 hearing that they would require the signs' compliance with area lighting regulations to enforce this regulation, which is already reflected in Condition 3. Staff is recommending a change to this condition to refer to the site lighting regulation in the Coors Corridor Plan, which is more specific than the Zoning Code. As amended in 1989 (see R-458 at front of CCP), Policy 4.b.9 Site Lighting, Design Regulation 1 states:

"Site lighting shall not have a total off-site luminance greater than 1000 lamberts *from any point* [Note: italics indicate difference with Zoning Code]."

Note that Design Regulation 4 for site lighting, which controls average light levels on a site, is already covered by General Note 8 on the site development plan.

Staff would like to revisit the rate of change in the signs' message or picture. Under general sign regulations of the Zoning Code, it could change every 5 seconds (14-16-3-5(D)(3)). Staff continues to believe that this potential frequency would be distracting to motorists due to the multiple lanes, including merging and turning lanes, and the volume and speed of traffic on elevated Coors. The same regulation states that no sign or part of a sign may move more often than once each 10 seconds. Given the context of the signs and the visual impact of electronic display panels, staff believes that it would be prudent to limit the frequency to 10 seconds for the message or picture, as recommended in a new condition.

Finally, the EPC has been systematically requiring that all signs be legible based on minimum 70% contrast between lettering or graphics and the background in ADA Accessibility Guidelines (ADAAG). This is recommended in a new condition.

CONCERNS OF REVIEWING AGENCIES

Code Enforcement provided input into this staff report. The Legal Department provided the current status of the litigation in District Court and general guidance for the EPC in how to respond to the remand.

Staff requested an update from Transportation Planning (Department of Municipal Development) concerning the possible extension of elevated Coors Blvd. above Quail Road. They responded that the City is proposing a suspension of the project pending a future update of the Coors Corridor Plan.

NEIGHBORHOOD/PUBLIC CONCERNS

The remand was noticed by the City on September 23, 2009 by means of a legal ad and a notice mailed to property-owners within 100' and to contacts of the affected neighborhood associations and the Westside Coalition (see att.) A notice also appeared in the September/October 2008 issue of the Neighborhood News newsletter published by the City's Office of Neighborhood Coordination. As of 9/22/2009, the SR Marmon NA continued to support the signage proposal. No facilitated meeting was held, because the West Bluff NA and the West Side Coalition felt that mediation would be of greater service than facilitation. Mediation did not occur because the parties were not in agreement as to the proposed nature of the mediation session.

CONCLUSIONS

Responses to the City Council's remand are provided in this staff report and reflected in the findings. Findings pursuant to the remand clarify and supplement the EPC's approval of the site development plan for building permit amendment. However, with regard to the size of the signs, staff finds that an exception to C-2 regulations is not justified by the elevation of the roadway. Unlike the static design used in the existing free-standing signs in the shopping center, the proposed electronic display panels will allow each business to advertise on the full sign face area of each sign, which should provided adequate visibility on a sign face with the standard dimensions allowed under the Zoning Code. A new condition is recommended accordingly.

Additional conditions are also recommended to mitigate distraction to motorists from the electronic display panels and ensure their legibility.

Staff recommends approval of the site development plan amendment, pursuant to the remand and subject to revised conditions.

FINDINGS - 07EPC-40097, February 18, 2010, Site Development Plan for Building Permit Amendment, pursuant to AC-09-07, Aug. 4, 2009, Remand from City Council

[Note: Recommended additions to the previous findings, in the Notice of Decision dated 2/19/2009, are ~~struck through~~ and additions are underlined; numbering has changed as a result]

1. The request is to amend a site development plan for building permit for Tracts 10, 11 and 12, West Bluff Center, a site of approximately 6 acres located on Coors Blvd. NW north of Ouray Road zoned C-2 and P (SC). The applicant proposes to add a ~~52~~ 50 ft bell-tower to an existing building on Tract 10 and mount a sign on two facades of the tower, with sign faces of 125 sf each and a maximum height of 40 ft. An existing free-standing sign will be removed.
2. The applicant is requesting signs that are higher and larger than normally allowed in the C-2 zone, so that they are visible from the section of Coors Blvd that is elevated above Ouray Road. The ~~LED (light emitting diode) signs~~ electronic display panels would be used to advertize shops and services in the shopping center, including which may include businesses outside the subject site in the site plan area governed by project #1000188.
3. The subject site is in the Established Urban area of the Comprehensive Plan, within the boundaries of the West Side Strategic Plan (Rank II) and in Segment 2 of the Coors Corridor Sector Development Plan (Rank III).
4. The Albuquerque/Bernalillo County Comprehensive Plan, the West Side Strategic Plan (2002, amended through 2009), the Coors Corridor Sector Development Plan (1984, amended through 2003) and the City of Albuquerque Zoning Code are incorporated herein by reference and made part of the record for all purposes.
5. The subject site forms the middle section of the West Bluff Shopping Center. The request ~~is accompanied by~~ was heard on February 19, 2009 by the EPC in conjunction with project # 1000188, case #s 07EPC-40095 and -40101 (Tracts 1 – 5, West Bluff Center), because City Council determined in previous actions that the two site development plan areas should be treated as one shopping center, subject to requirements of the Shopping Center (SC) regulations of the Zoning Code (AC-01-14 and AC-01-15, dated September 18, 2001). The associated project #1000188, case #s 07EPC-40095 and -40101 were withdrawn on February 19, 2009.
6. The appropriateness of EPC review of the request was established following Zoning Hearing Examiner actions, appeals and discussions between the applicant, the City and neighborhood associations. In August 2006, the ZHE denied requests for variances to sign height and area (#1004904, 06ZHE-00695, -00696, 8/30/06). In November 2006, appeals by the applicant were heard by the Board of Appeals. In April 2007, the remanded cases were heard again by the

ZHE and deferred indefinitely with the consent of all parties. The Planning Department, with the consent of interested parties, determined that EPC review was appropriate. The current case was first heard by the EPC in January 2008, but was deferred at the applicant's request to revise the proposal in light of concerns raised by the EPC and the West Side Coalition, including amending sign regulations of the Coors Corridor Plan (CCP). The revised request does not include a text amendment to the CCP, and #1000264, case #07EPC-40102 was withdrawn by the EPC on March 19, 2009.

7. The Feb. 19, 2009 EPC approval of 07EPC-40097 was appealed by the Grande Heights NA, West Bluff NA and the Westside Coalition of NAs on the grounds that the EPC erred in applying city plans, in its findings and by acting arbitrarily or abusive of their discretion (AC-09-07, 3/2009). The appeal was heard by the Land Use Hearing Officer (LUHO) on June 4, 2009. The City Council took no action on the LUHO's recommendation to affirm the EPC's decision, and remanded it to the EPC on August 3, 2009. On August 28, 2009, the applicant appealed the City Council's remand in District Court. The District Court case is pending and the judge has not granted a stay on the EPC process.

8. The New Mexico Department of Transportation (NMDOT) changed the design of Coors Blvd. north of the interchange with I-40 after EPC approval of the site development plan for building permit of the West Bluff shopping center. In the vicinity of the subject site, Coors Blvd. rises over Ouray Rd. and returns to grade at Quail Rd. Off-ramps from I-40 lead to north-bound Coors Blvd. and to a frontage road that runs along the west boundary of the shopping center. North of Ouray Road the frontage road is reduced to one lane and turns into the shopping center; it does not extend to Quail Road.

9. The City of Albuquerque, Department of Municipal Development, ~~has recently received authorization of federal highway grant funds for the design of a grade-separated intersection at Coors Boulevard and Quail Road around early 2009. The design stage, including environmental review, is underway and is expected to be completed in mid-2010. There is no construction schedule at this time for the proposed improvements.~~ The improvements may further affect the visibility of signs in the area of this intersection as a result of elevating the grade of Coors Boulevard over Quail Road. The City is proposing a suspension of the project pending an update of the Coors Corridor Plan.

11. In response to the City Council's remand (AC-09-07, 8/4/2009):
 - a. Remanding this matter to the EPC will likely serve public policy and resolve the appeal.

While the remand is likely to serve public policy by clarifying planning and zoning issues pertinent to the case and by providing an opportunity for interested parties to express their views at a public hearing, it may not resolve the appeal.

- b. The EPC needs to specifically resolve the threshold issue of whether under §14-16-2-17(A)(10)(f)2. a determination that there is a "special situation" permits the EPC to approve the requested exceptions as to height and size or whether the EPC is limited to approving exceptions as provided for in § 14-16-3-2. The EPC did not resolve this issue.

The EPC has authority to grant exceptions to the C-2 sign regulations in special situations to provide for adequate signing on shopping center sites under 14-16-2-17(A)(10)(f)2. of the C-2 zone. This is consistent with the Declaratory Ruling dated 9/8/1987, in which the Zoning Enforcement Manager, who has the authority and jurisdiction to make such rulings, ruled that the EPC may grant exceptions to regulations that would normally apply to signs located on shopping center (SC) sites in the C-1, C-2 and C-3 zones.

The applicant has adequately justified that a "special situation" exists per C-2 zoning (14-16-2-17(A)(10)(f)), which warrants an EPC-approved exception to the height of the signs, in order to provide adequate signing. The special situation is that conditions of the shopping center site have been significantly changed since the construction of the Coors/I-40 interchange and the elevation of Coors Blvd. over Ouray Blvd. The exception for height is necessary to provide adequate signing for businesses on the subject site, so that signs are visible to the travelling public on Coors Blvd.

The exception is not needed for size, because adequate sign face area is provided by the C-2 regulations, based on a percentage façade area; and by the electronic display panel technology, which allows the total sign face to be used by each shopping center tenant in succession, affording them adequate visibility.

- c. The EPC needs to consider what constitutes a "belfry" so as to be exempt to height restrictions under the Zoning Code. In particular, the EPC needs to consider whether the use of the structure for purposes other than to house a bell impacts whether the structure is a belfry. The EPC did not resolve this issue.

The proposed tower does not require a height exemption because it is within the allowed height limits established in Policy 4.b.2, Design Regulation B.1 of the Coors Corridor Plan. The height of the tower (50 ft as defined in the Zoning Code) falls within a 45° angle plane from the north boundary of the site, and within 60° angle planes from the right-of-way boundary of Coors Blvd., and the centerlines of Ouray Rd. and Corona Dr., and it is not located within 85 ft of a lot zoned for houses. Consideration of height exemptions for belfries or ornamental towers under Supplementary Height, Area and Use regulations (§14-16-3-3 (A)) is not necessary, because the tower complies with the Coors Corridor Plan. Therefore the issue of whether the structure is used to support a sign in addition to housing a bell is not relevant to this case.

Nevertheless, if a tower with a belfry was used to support signs, it would not affect the height exemption for the structure, because sign height is regulated separately under the Zoning Code.

- d. The EPC needs to explain whether it did in fact grant an exception to the size of the proposed signs and if so how the need for that exception relates to the evidence presented. The EPC did not explain the justification for its decision on this issue.

The EPC granted an exception for the size of the sign on the northwest façade of the tower, because the sign face area is 22% of the total façade area, which exceeds the 15% limit allowed in §14-16-2-17 (A)(10)(c)2.b. of the C-2 zone. The EPC did not grant a size exception for the size of the sign on the southwest façade of the tower, because the total sign face area of the proposed sign and the two approved wall signs on the west-facing façade of the building is less than 15%. The façade area relevant to the second sign includes the façade of the tower and the adjoining west-facing facades of the building, because they are oriented within 45° of each other, as defined in the Zoning Code (§14-16-1-5).

The regulations would result in signs of two different sizes on the same structure, which would not support the purposes of sign regulations in the Coors Corridor Plan: “sensitive to the goals for the design and character of the Coors Corridor area” ; and “aesthetically pleasing”. Since an exception to sign size is not justified (see b. above), it is appropriate to limit the size of both signs to 86 sf.

10. The proposal furthers or mostly furthers the following applicable goals and policies of the Comprehensive Plan:

- a. The proposed tower provides a support for signage to serve tenants and prospective customers. Visual clutter at grade will be reduced because the new tower and higher signs will replace a free-standing sign that is half its height. The tower will landmark the shopping center, providing a focal point and visual appeal for the center. The tower and the signage are in a location and have a design that respects the existing neighborhoods and scenic resources. (Established Urban Area Goal and Policy II.B.5.d)
- b. The proposed tower is sited at the western edge of the shopping center and is angled so that the signs face away from the nearest residential neighborhood, which minimizes potential adverse effects of LED illumination on these residents (Policy II.B.5.i).
- c. The bell tower introduces a new design element to the shopping center that is relatively compatible with the architecture of the existing buildings. The height and width of the tower

visible from Coors Blvd. will not unduly detract from the vistas to the mountains (Policy II.B.5.1).

- d. The proposed tower and signage mostly maintains the views of the natural landscape, which only became available after construction of the Coors/I-40 interchange (Developed Landscape Goal and Policy II.C.8.a).
12. The proposal furthers Policy 4.6 of the West Side Strategic Plan: Views of the Sandias, now available from the recently elevated section of Coors Blvd., will mostly be preserved and the signage will be readable and not dominate the roadway. Elimination of an existing free-standing sign on the subject site will improve the visual aspect of the site and the surrounding area.
 13. The proposal furthers or mostly furthers the following applicable goals, policies and regulations of the Coors Corridor Plan:
 - a. The design of the tower is generally compatible with other towers in the shopping center. The proposal is a reasonable and equitable solution that meets the intent of Issue 4.
 - b. Views within the corridor and toward the Sandia Mountains were established by the elevation of the Coors Blvd. roadway and will be altered but not blocked by the tower (Policies 4.a.1 and 4.a.2).
 - c. The architecture of the tower is compatible with the style of existing buildings in the shopping center (Policy 4.a.3).
 - d. The proposed tower is located at the western edge of the site and relates closely with Coors Blvd., approximately ~~25~~ 30 ft. from the right-of-way (Policy 4.b.2).
 - e. In light of the site's "special situation" in this specific shopping center, ~~electronic~~-signage in the form of ~~LED~~ LED electronic display panels is an efficient use of sign face area to advertise several tenants located in the shopping center (Policy 4.d.1).
 14. The applicant has adequately justified that a "special situation" exists per C-2 zoning (14-16-2-17(A)(10)(f2)), which warrants an EPC-approved exception to height ~~and size~~ for a building-mounted sign. Conditions have been significantly changed since the construction of the Coors/I-

40 interchange and the elevation of Coors Blvd. over Ouray Rd., which has adversely affected the businesses on the subject site by severely limiting their visibility from Coors Blvd.

15. Property-owners within 100', the West Bluff and S. R. Marmon Neighborhood Associations (NAs) and the West Side Coalition of NAs were notified of the proposal. A facilitated meeting was held on February 9, 2009. The proposal is acceptable to the S.R. Marmon NA. Laurelwood NA has no position. It is opposed by the West Bluff NA, Vista Grande NA, West Mesa NA, the Grande Heights NA and the Executive Committee of the West Side Coalition because they see no reason for an exception to standard City regulations. Property-owners within 100', the affected NAs and the West Side Coalition of NAs were also notified of the remand. No facilitated meeting was held on the remand, because the West Bluff NA and the West Side Coalition considered that mediation would be of greater service than facilitation. Mediation did not occur because the parties were not in agreement as to the proposed nature of the mediation session. Additional comments have been received from the appellants, opposing the signage proposal.

RECOMMENDATION - AC-09-07/07EPC-40097, February 18, 2010

APPROVAL of 07EPC-40097, a site development plan for building permit amendment, pursuant to AC-09-07, a remand from City Council, for Tracts 10, 11 and 12, West Bluff Center, based on the preceding Findings and subject to the following Conditions of Approval.

CONDITIONS OF APPROVAL - AC-09-07/07EPC-40097, February 18, 2010, pursuant to AC-09-07, Aug. 4, 2009, Remand from City Council

[Note: Recommended additions to the previous conditions, in the Notice of Decision dated 2/19/2009, are ~~struck through~~ and additions are underlined]

1. The EPC delegates final sign-off authority of this site development plan to the Development Review Board (DRB). The DRB is responsible for ensuring that all EPC Conditions have been satisfied and that other applicable City requirements have been met. A letter shall accompany the submittal, specifying all modifications that have been made to the site plan since the EPC hearing, including how the site plan has been modified to meet each of the EPC conditions. Unauthorized changes to this site plan, including before or after DRB final sign-off, may result in forfeiture of approvals.

2. Prior to final DRB sign off, the applicant shall meet with the Staff planner to ensure that conditions of approval are met. Evidence of this meeting shall be provided to the DRB at the time of application.
3. Note 11 on Sheet C-2 shall include: “All signage, including ~~LED~~ electronic display panels, shall comply at minimum with site lighting and signage regulations of the Coors Corridor Plan and/or with area lighting and general sign regulations of the Zoning Code. Where these conflict, the more restrictive regulation shall apply.”
4. A note shall be added to the site development plan stating: “At no time shall ~~the electronic signage (LED display panels)~~ include graphics against a solid white background.”
5. A note shall be added to the site development plan stating: “At no time shall advertising for more than one tenant at a time be permitted per sign face of ~~the electronic signage (LED display panels)~~.”
6. The elevations (sheet A371) shall be amended to reflect the design changes approved by the EPC.
7. Sign #4 on the subject site shall be removed upon construction of the tower.
8. On the elevations, replace all instances of “changeable message board” with “electronic display panel”.
9. The sign face area of both electronic display panels shall be reduced to 86 sf.
10. A note shall be added to the site development plan stating: “At no time shall the electronic display panels change their brightness.”
11. A note shall be added to the site development plan stating: “No electronic display panel shall change its message or picture at a rate more often than once each ten seconds.”
12. A note shall be added to the site development plan stating: “The minimum contrast between graphics or lettering and the background shall be 70%.”

Carol Toffaleti
Planner

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Candelaria Peterson, Westside Coalition of N.A.'s, 7608 Elderwood NW, Albuquerque, NM 87120

Attachments

City Council Notice of Decision: AC-09-7 dated August 4, 2009
EPC Notice of Decision, #1000264, 07EPC-40097, 2/19/2009;
EPC Notices of Decision and Staff Reports, #1000264, AC-09-7/07EPC-40097, 10/15/2009 & 12/16/2009
EPC Notice of Decision, #1000264, 07EPC-40102, 3/19/2009
COA Declaratory Ruling re. Signs Located on Shopping Center Sites, dated September 8, 1987
Map of West Bluff shopping center provided by applicant, dated 1/21/2009
Site development plan amendment dated 12/16/2008: sheets C2 & A371