



STAFF REPORT

Date: June 14, 2016
To: Bryan Montgomery, City Manager
From: Troy Edgell, Code Enforcement Manager
Subject: Appeal of Order to Demolish 150 East Acme—Owner Michael Rasooly

Approved and Forwarded to the City Council:

Bryan Montgomery, City Manager

Background and Analysis

The building at 150 E. Acme has been found to be unsafe for occupancy. It has been the subject of numerous code enforcement violations to include, but not limited to, graffiti, vagrancy, vector control, drug activity, and a storage area for trash and debris including human waste and drug paraphernalia. Business owners adjacent to the building have complained that their customers have been harassed by homeless panhandlers and drug sellers using the building.

Despite numerous promises to abate the nuisances and secure the building dating back to December 2014, the owner of the property failed to complete the required actions and the City was forced to perform an emergency abatement in July 2015 after becoming more aware of conditions on the property that were a threat to public health and safety. During performance of the abatement, it was determined by the acting Building Official that the structure was unsafe due to dry rot and termite damage, and a Notice of Order to Repair or Demolish was issued to the owner.

The owner committed to repair the building and submitted a request for Design Review approval of the renovation. Based upon recommendation by Staff, City Council approved the Design Review through the adoption of Resolution 06-16 (attached). The Resolution set forth conditions recommended by both the Building and Planning Divisions to ensure the property owner was timely and diligent in his remedying of the condemned building structure. Mr. Rasooly was present at the City Council Meeting and was advised of the conditions.

Resolution 06-16 was signed on 14 January 2016 and Mr. Rasooly was notified via email on 21 January that he could retrieve the building permit plans that he had submitted for the needed renovations (which he had submitted in October of 2015). As

part of this notification he was informed there were redlines (comments) on the Plan Review that he needed to address before the plans could be approved.

Specifically, the Plan Review directed Mr. Rasooly to "see redlines and attached resolution 06-16." Mr. Rasooly acknowledged via email on 22 January that he will pick up the plans. Shortly thereafter he obtained the plans with the Plan Review and the Resolution attached.

As of 17 May 2016, Mr. Rasooly had not re-filed plans nor contacted the City to further discuss the redline comments. Due to Mr. Rasooly's failure to act pursuant to the conditions of the Resolution and the Building Code, on 18 May 2016 a "Notice of Intent to Demolish" was sent to Mr. Rasooly informing him of his failure to meet Condition 7 which stated:

"In order to keep this Design Review approval valid, Applicant shall have a maximum 30 days from the date of this approval to revise and resubmit building plans, pursuant to any plan check comments and modifications required through this resolution, to the Building Permit Center. Failure to meet this deadline may result in further action in Code Enforcement Case (CE-15-0552)."

As part of this Notice, he was provided 14 days to appeal and he has exercised this right. It is the City's understanding that Mr. Rasooly's reason for the appeal is to seek an extension to the deadline to modify the project.

The City Attorney's Office has informed us that an Administrative Hearing Officer does not have the authority to grant an extension to the deadline, therefore, this matter is before the City Council.

Fiscal Impact

Denial of the appeal will authorize Staff to proceed with the demolition. Funds expended for the demolition will then be confirmed by City Council via Resolution and invoiced to the Property Owner. If invoice is not paid, the Resolution allows the City to place a lien on the property and collect the amounts due, if necessary, via direct assessment on the 2016-2017 tax roll.

Recommendation

Staff recommends that the Council deny the appeal.

Subject: Appeal of Order to Demolish-150 E. Acme

Date: June 14, 2016

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Attachments

1. Resolution 06-16
2. Notice of Intent to Demolish - 150 E. Acme
3. Letter of Appeal (Michael Rasooly)
4. Site photos

RESOLUTION NO. 06-16

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OAKLEY MAKING
FINDINGS AND APPROVING DESIGN REVIEW FOR 150 E. ACME STREET
BUILDING RENOVATION DESIGN REVIEW (DR 11-15) LOCATED AT 150 E. ACME
STREET**

FINDINGS

WHEREAS, on November 23, 2015, Michael Rasooly ("Applicant") submitted an application requesting Design Review approval of renovation, including new siding and building colors, of a dilapidated 5,880 square foot building located at 150 E. Acme Street ("project"). The project site is zoned "SP-4" (Downtown Specific Plan) District: APN 035-121-005; and

WHEREAS, the Design Review application was submitted as a requirement of a City Code Enforcement Case (CE-15-0552); and

WHEREAS, on December 23, 2015 the project application was deemed complete per Government Code section 65920 et. seq; and

WHEREAS, the project site is designated Commercial Downtown (CD) on the Oakley 2020 General Plan Land Use Map, and zoned "SP-4" (Downtown Specific Plan) District; and

WHEREAS, the request for design review approval is exempt from the requirements of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15301, "Existing Facilities." The renovation results in restoration or rehabilitation of a deteriorated or damaged structure to meet current standards of public health and safety; and

WHEREAS, pursuant to Oakley Municipal Code section 9.1.1604 (Design Review), the proposed renovation is considered significant [design] changes to the exterior of the building and shall be heard as a Regular Calendar item; and

WHEREAS, on January 12, 2016, the City Council received a report from City Staff, and deliberated on the project. At the conclusion of its deliberations, the City Council took a vote and adopted this resolution to approve the project, as revised by the City Council during its deliberations; and

WHEREAS, if any term, provision, or portion of these Findings or the application of these Findings to a particular situation is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of these Findings, or their application to other actions related to the Project, shall continue in full force and effect unless amended or modified by the City; and

WHEREAS, these Findings are based on the City's General Plan, the City's Zoning Ordinance, the Oakley Downtown Specific Plan, the City of Oakley Commercial

and Industrial Design Guidelines, the applicant's plans, and the information submitted to the City Council at its January 12, 2016 meeting, both written and oral, including oral information provided by the applicant, as reflected in the minutes of such meetings, together with the documents contained in the file for the project (hereafter the "Record").

NOW, THEREFORE, BE IT RESOLVED THAT, on the basis of the above Findings and the entire Record, the City Council makes the following additional findings in support of the recommended approvals:

- A. Regarding the application requesting Design Review approval for the project, the City Council finds that the proposed new siding and color changes, with the addition of vertical architectural features, a base to the building, and window mullions or muntins, as conditioned herein, are consistent with the applicable Design Guidelines of the Downtown Specific Plan. The proposed colors use quality paint (Behr brand) and are compatible, subdued and not garish; and
- B. The Project complies with Measure J Growth Management requirements.

BE IT FURTHER RESOLVED THAT, on the basis of the above Findings and the Record, the City Council approves the applicant's request for Design Review approval of 150 E. Acme Street Building Renovation Design Review (DR 11-15), subject to the following conditions:

Planning Division Conditions

General Planning Conditions:

1. This Design Review is approved as described in the Staff Report dated January 12, 2016, and as conditioned herein.
2. All conditions of approval shall be satisfied by the owner/developer. All costs associated with compliance with the conditions shall be at the owner/developer's expense.
3. Applicant shall indemnify, defend, and hold harmless the City of Oakley, the City Approving Authorities, and the officers, agents, and employees of the City from any and all claims, damages and liability (including, but not limited to, damages, attorney fees, expenses of litigation, costs of court).
4. Applicant shall comply with the requirements of the Oakley Municipal Code and applicable Conditions of Approval. Any exceptions must be stipulated in these Conditions of Approval. Conditions of Approval are based on the plans received by the Community Development Department and made a part of the City Council's meeting packet for January 12, 2016.
5. Applicant shall use quality cement siding with wood stamping for the new siding. The body, door and trim colors shall match the Behr brand colors

described in the Staff Report. Any dimensional trim shall be painted to the point it intersects with the main vertical wall of the building.

Building Additions Conditions:

6. Applicant shall work with Staff to include the following additions to the final building design:
 - a. Vertical architectural features (e.g. columns, piers, etc.) shall be added to the façade to assist in breaking up the horizontal spacing. There are two areas on both the front and rear elevations of the building where features could be added. Also, for phase 2, the front elevation of the west building has spaces for two features. It is recommended the applicant work with Staff to provide this element at the time of building permit submittal.
 - b. Add a distinct base or wainscot to the buildings' street frontages and sides allowing pedestrian access. The material and/or color shall match that being proposed for the vertical features suggested herein.
 - c. Windows shall be recessed a minimum of 2 inches from the face of the building and include mullions or muntins to provide for multi-pane windows. Pursuant to the Downtown Specific Plan, "snap in" muntins shall not be used.

Code Enforcement and Building Divisions Conditions

Timing Conditions:

7. In order to keep this Design Review approval valid, Applicant shall have a maximum 30 days from the date of this approval to revise and resubmit building plans, pursuant to any plan check comments and modifications required through this resolution, to the Building Permit Center. Failure to meet this deadline may result in further action in Code Enforcement Case (CE-15-0552).
8. In order to keep this Design Review approval valid, Applicant shall have a maximum 21 days from the date Applicant is notified by mail, email and/or phone that building permits are ready for issuance to pull the building permits and pay the appropriate fees. Failure to meet this deadline may result in further action in Code Enforcement Case (CE-15-0552).
9. In order to keep this Design Review approval valid, Applicant shall have a maximum 180 days from the date building permits are issued to complete improvements to the building. The Building Official may grant individual time extensions if the Applicant provides a written request with good reason and has shown ongoing progress in completing the improvements. Decisions of the Building Official are non-appealable and final. Failure to meet this

deadline may result in further action in Code Enforcement Case (CE-15-0552).

Public Works and Engineering Conditions

10. The plans submitted do not show or call out construction of any new impervious areas such as paving in the parking lot and no new impervious is approved at this time. If, at some time in the future, the applicant intends to add new impervious, a detailed site plan shall be submitted to the City for review and approval prior to commencing any construction activities. The site plan shall be prepared by a registered civil engineer. The City reserves the right to require preparation and submittal of a Storm Water Control Plan for the project if, after review of the site plan, it is determined by City staff to be needed to comply with the requirements of the Municipal Regional Stormwater NPDES Permit. The applicant shall execute any agreements required by the Stormwater Control Plan which pertain to the transfer of ownership and/or long term maintenance of stormwater treatment mechanisms required by the plan.

PASSED AND ADOPTED by the City Council of the City of Oakley at a meeting held on the 12th day of January, 2016 by the following vote:

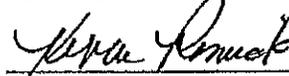
AYES: Hardcastle, Higgins, Perry, Pope, Romick

NOES:

ABSENT:

ABSTENTIONS:

APPROVED:


Kevin Romick, Mayor

ATTEST:



Libby Vreonis, City Clerk

1-14-16

Date

CITY COUNCIL
Kevin Romick, *Mayor*
Sue Higgins, *Vice-Mayor*
Vanessa Perry
Randy Pope
Doug Hardcastle



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SENT VIA E MAIL AND U.S. MAIL

18 May 2016

RASOOLY, MICHAEL M AND ZIBA F
PO BOX 214
LAFAYETTE, CA 94549

RE: Notice of Intent to Demolish 150 East Acme Street Oakley California 94561
APN: 035-121-005 LEGAL DESCRIPTION: Town of Oakley Lots 7 to 10 Blk 1 EX MR

Per Resolution Number 06-16 of the City Council of Oakley dated 14 January 2016 making findings and approving Design Review for 150 East Acme building renovation Design Review (DR 11-15) located at 150 East Acme, it has been determined that the timing condition set by said Resolution has not been satisfied and further action is required by Code Enforcement.

Per paragraph 7 of Resolution Number 06-16, in order to keep the Design Review approval valid, Applicant was provided a maximum 30 days from the date of approval (14 January 2016) to revise and resubmit building plans, pursuant to any plan check comments and modifications required through the Resolution, to the Building Permit Center. This was not accomplished and to date is still outstanding. As a result, required repairs as outlined in Attachment A of the Notice and Order to Repair or Demolish Structure dated 11 August 2015 have not been performed and the outstanding violation is now being referred to Code Enforcement.

The purpose of this letter is to inform you that the City of Oakley is pursuing an Order to Demolish and will seek Requests for Proposals to complete the required actions necessary to demolish the structure and remove all debris.

You have the right to appeal this decision to the Administrative Hearing Officer. Any such appeal must be in writing, explain the reason(s) for the appeal, and be filed with the City Clerk within 14 calendar days of the date of this letter.

Troy Edgell
Code Enforcement Manager

Attachments: Notice and Order to Repair or Demolish (11 August 2015)
Resolution 06-16 (14 January 2016)

Date: May 27, 2016

Attention: City Of Oakley
Building and Planning Department

From: Michael Rasooly

Property : 150 East Acme Street

Subject: Appeal and request for extension (Via email)

This is a request for appeal to your letter dated May, 18, 2016, in reference to the above property in Oakley. I am requesting an extension and appeal in order to finalize our permit application for the property. The reason for extension is to modify the project to a more feasible project for that particular location in order to be able to finance the construction of the project. I will be working on making the necessary revisions and will re-submit to finalize the permit accordingly.

Best

Michael Rasooly, P.E.

Owner

415-747-1000

150 E Acme Exterior East Side
Prior to City Emergency Abatement



Graffiti Removed by City



150 E Acme North Side



150 E Acme Broken Glass



150 E Acme West Side Broken Glass



Unsecured Entry and Vandalized City Property



150 E Acme Trash and Debris Interior



150 E Acme Trash and Debris Interior



150 E Acme Trash and Building Materials from Exterior of Property Moved Inside

