



City of Del Mar  
Department of Planning and Community Development  
1050 Camino del Mar  
Del Mar, CA 92014

Phone: 858-755-9313 Fax: 858-755-2794  
Counter Hours: M&W 1:00 pm – 5:30 pm  
Email: [planning@delmar.ca.us](mailto:planning@delmar.ca.us)  
Website: [www.delmar.ca.us](http://www.delmar.ca.us)

## REQUEST FOR DETERMINATION OF SUBSTANTIAL CONFORMANCE

### *A Guide to the Process*

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#### **BACKGROUND**

The City of Del Mar has a rigorous land use review process in which virtually all new development is reviewed by staff, and in many cases, a discretionary review board. The plans that ultimately gain approval will have gone through an intense examination by staff and the public to ensure that the proposed development will comply with City codes and that it will not have an adverse impact on the community.

Recognizing all of the effort that goes into the review of development proposals, the City requires that projects be implemented in strict accordance with the approved plans. Staff performs numerous inspections to check that the construction that occurs in the field matches what was shown on the approved plans. Additionally, the applicant/property owner is required to provide affidavits and, in some cases, certifications from a surveyor or engineer, regarding a project's compliance with the plans.

While staff does have discretion to authorize some minor changes to approved plans, that discretion is extremely limited. More often than not, a proposed change to approved construction drawings will require the submittal of an application for formal authorization to modify the approved plans. This process can be lengthy and the mere submittal of an application does not guarantee its approval. For these reasons, applicants are advised to "Build it per plan."

Regardless, there is a recognition that, despite how carefully a project is planned, circumstances arise where applicants propose changes to what was originally approved. The City Council has, therefore, established a procedure to determine whether those proposed changes are insignificant and can be authorized by staff, or if they should be reviewed through a process that involves more oversight and an opportunity for public input. The procedure involves a determination of whether a project, if modified as proposed, would still be in substantial conformance with the project as it was previously authorized by the City. If the proposed change is deemed to be in substantial conformance, it can be authorized by staff. If it is not deemed to be in substantial conformance, the modification would be subject to a different review, one that would involve the opportunity for public review and comment. Typically, the change would be reviewed through the same type of review process as was originally employed for the review of the project (DRB or Conditional Use Permits etc.). Other times, a more streamlined Administrative Design Review (ADR) process may be applicable.

It should be noted that the City of Del Mar's threshold for what constitutes "substantial conformance" is very different than the threshold used by most other jurisdictions. What might be acceptable as an over-the-counter plan change in another city may require a far more stringent level of review in Del Mar.

**Failure to gain authorization for deviations from approved plans before constructing them in the field could result in fines, Stop Work Orders and/or other code enforcement actions with significant project delays and expenses.**

## **PROCESS**

In order to determine if a proposed change to project plans may be authorized by staff, an applicant will have to submit a Request for a Determination of Substantial Conformance using the attached form. The application must be accompanied by plans and a narrative describing the proposed change(s) in sufficient detail to determine how the proposal would deviate from the approved drawings and how the project would still comply with all applicable codes and regulations.

If a clear decision can be made on the request, staff will issue a determination as such. If there is a question as to whether the modification can be considered to be in substantial conformance, staff may confer with a citizens' committee member appointed by the City Council for this purpose.

If a determination of Substantial Conformance is granted, the request will be documented in the project file and the applicant may proceed with the requested modification (subject to receipt of any required permits or permit modifications such as a Building Permit). A grant of Determination of Substantial Conformance is deemed ministerial and is not appealable to the City Council.

If the submitted request results in a determination that the modification would not be in substantial conformance, the applicant will be required to either 1) implement the project as it was originally approved; or 2) seek a separate authorization of the requested change through the process identified in the City's Municipal Code.

### Factors to be considered in making a determination on the Substantial Conformance request.

In making the determination of whether the proposed modification may be determined as being in substantial conformance, the staff, sometimes assisted by an appointed citizen's committee representative, will apply the following standards:

1. Does the proposed deviation from approved plans represent a change in any aspect of the project's original discretionary approval that was considered essential to the projects overall design, quality, safety or function?
2. If the project had originally been proposed in the manner now proposed, would the approving body have been able to make the findings that the project would meet the applicable standards of review?
3. Does the proposed deviation from approved plans meet the applicable City regulations, including conformance with the Community Plan and Municipal Code?
4. Would the proposed deviation from approved plans represent an upgrade in overall design features and/or materials and will it improve upon the project's compatibility with the surrounding neighborhood?

5. Does the proposed deviation from approved plans involve a change to an aspect of the project that, during the original hearing, was identified by a member of the public and acknowledged by the approving body to be of particular importance?

The table below shows examples of the types of deviations from approved plans that the City is often presented with and an indication of whether this type of deviation is or is not generally determined to be in substantial conformance.

Examples of requests and the determinations typically rendered:

Substantial Conformance  
 (Can potentially be approved at staff level)

Not in Substantial Conformance  
 (Would trigger additional review)

Interior modifications that do not add any floor area to a structure	Increase in square footage of a structure
Minor change in the size or installation point of windows or doors	Increase in height of building
Change in tone (vs. color) of exterior materials	Expansion of building envelope
Substitution of hardscape material	Inclusion or deletion of trees in landscape plan
Substitution of in-kind landscape materials (other than required installation of City's protected trees)	Change of material of walls or fences
Minor change (less than six inches) in height or alignment of a wall or fence	Increase in height of finished floor elevations
Minor change in size or location of approved skylights	Greater than six inch change in alignment of walls or fences
Modification of fixtures used at approved exterior light locations	Addition of roof top decks
Minor change in dimension of support posts or timbers	Installation of exterior lighting at new locations
Minor change in shape of pool or spa (without increase in size)	Increase in surface area or change of location of pool or spa
Decrease in height or pitch of roofline	Addition of mechanical equipment (HVAC, pool pumps, etc.)