



**AGENDA MEMO - COMMUNITY DEVELOPMENT**

**CITY COUNCIL MEETING DATE: MARCH 15, 2023**

**DEPARTMENT: COMMUNITY DEVELOPMENT**

**ITEM DESCRIPTION: APPLICANT/OWNER: ROYAL HERALD BYRON III**

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**\*\* STAFF RECOMMENDATION(S) \*\***

<b>CASE NUMBER</b>	<b>RECOMMENDATION</b>	<b>REQUIRED FOR APPROVAL</b>
<b>22-0654-VAR1</b>	Staff recommends DENIAL, if approved subject to conditions:	
<b>22-0654-SDR1</b>	Staff recommends DENIAL, if approved subject to conditions:	

**\*\* NOTIFICATION \*\***

**NEIGHBORHOOD ASSOCIATIONS NOTIFIED**

5

**NOTICES MAILED**

239 (by City Clerk)

**PROTESTS**

3

**APPROVALS**

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**\*\* CONDITIONS \*\***

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**22-0654-VAR1 CONDITIONS**

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**Planning**

1. Approval of and conformance to the Conditions of Approval for Site Development Plan Review (22-0654-SDR1) shall be required, if approved.
2. This approval shall be void two years from the date of final approval, unless exercised pursuant to the provisions of LVMC Title 19.16. An Extension of Time may be filed for consideration by the City of Las Vegas.
3. All necessary building permits shall be obtained and final inspections shall be completed in compliance with Title 19 and all codes as required by the Department of Building and Safety.
4. These Conditions of Approval shall be affixed to the cover sheet of any plan set submitted for building permit.
5. All City Code requirements and design standards of all City departments must be satisfied, except as modified herein.

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**22-0654-SDR1 CONDITIONS**

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**Planning**

1. Approval of and conformance to the Conditions of Approval for Variance (22-0654-VAR1) shall be required, if approved.
2. This approval shall be void two years from the date of final approval, unless exercised pursuant to the provisions of LVMC Title 19.16. An Extension of Time may be filed for consideration by the City of Las Vegas.
3. All development shall be in conformance with the site plan, landscape plan, and building elevations, date stamped 11/07/22, except as amended by conditions herein.

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4. The trash enclosure shall be screened, gated, with a Roof or Trellis.
5. An Exception from Title 19.08.110 is hereby approved, to allow three interior parking area trees where six are required.
6. All necessary building permits shall be obtained and final inspections shall be completed in compliance with Title 19 and all codes as required by the Department of Building and Safety.
7. These Conditions of Approval shall be affixed to the cover sheet of any plan set submitted for building permit.
8. The applicant shall coordinate with the City Surveyor and other city staff to determine the most appropriate mapping action necessary to consolidate the existing lots. The mapping action shall be completed and recorded prior to the issuance of any building permits.
9. The applicant shall coordinate with the City Surveyor and other city staff to determine the most appropriate mapping action necessary to consolidate the existing lots. The mapping action shall be completed and recorded prior to the issuance of any building permits.
10. A technical landscape plan, signed and sealed by a Registered Architect, Landscape Architect, Residential Designer or Civil Engineer, must be submitted prior to or at the same time application is made for a building permit. A permanent underground sprinkler system is required, which shall be permanently maintained in a satisfactory manner; the landscape plan shall include irrigation specifications. Installed landscaping shall not impede visibility of any traffic control device.
11. A fully operational fire protection system, including fire apparatus roads, fire hydrants and water supply, shall be installed and shall be functioning prior to construction of any combustible structures.
12. All City Code requirements and design standards of all City Departments must be satisfied, except as modified herein.

**Public Works**

13. The sidewalk adjacent to this site shall meet Public Right-of-Way Accessibility Guidelines (PROWAG) in accordance with code requirements of Title 13.56.040 to the satisfaction of the City Engineer concurrent with development of this site. Grant any Pedestrian Access Easement needed to complete this requirement.

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14. Landscape and maintain all unimproved right-of-way adjacent to this site. All landscaping and private improvements installed with this project shall be situated and maintained so as to not create sight visibility obstructions for vehicular traffic at all development access drives and abutting street intersections.
15. Submit a License Agreement for landscaping and private improvements in the adjacent public rights- of-way, if any, prior to the issuance of permits for these improvements. If requested by the City, the applicant shall remove property within the public right-of-way at the applicant's expense pursuant to the terms of the City's License Agreement. The installation and maintenance of all private improvements in the public right of way shall be the responsibility of the applicant and any successors in interest to the property and assigns pursuant to the terms of the License Agreement. Coordinate all requirements for the License Agreement with the Land Development Section of the Department of Building and Safety (702-229-4836).
16. The applicant shall submit a letter to the Traffic Engineering Division that documents operations related to the use of public rights-of-way adjacent to this site. The letter shall include the proposed delivery routes and commercial loading zones. Additionally, the letter shall document anticipated pedestrian access routes and note any deficiencies. If traffic concerns arise from the operation of this site, the applicant shall remedy such concerns, to the satisfaction of the City Traffic Engineer within 60 days of written notice from the City.
17. Meet with the Flood Control Section of the Department of Public Works for assistance with establishing finished floor elevations and drainage paths for this site prior to submittal of construction plans, the issuance of any building or grading permits or the submittal of a map for this site, whichever may occur first. Provide and improve all drainage ways as recommended.

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**\*\* STAFF REPORT \*\***

**PROJECT DESCRIPTION**

This is a project request for a proposed two-story, 3,567 square-foot commercial shell building development on 0.33 acres located on the north side of Miller Avenue, approximately 160 feet west of Lexington Street.

**ISSUES**

- A Variance (22-0654-VAR1) is requested to allow 17 parking spaces where 21 are required. Staff does not support the request.
- On September 4, 2019, the City Council approved Variance (VAR-76681) and Site Development Plan Review (SDR-76682) for a similar development at the subject site. The entitlements have since expired.
- An Exception is requested to allow three interior parking area trees where six are required. Staff does not support the request.
- A Condition of Approval has been added by staff for the applicant to coordinate with the City Surveyor and other city staff to determine the most appropriate mapping action necessary to consolidate the existing lots.

**ANALYSIS**

The subject 0.33-acre site consists of three undeveloped parcels located on the north side of Miller Avenue, approximately 160 feet west of Lexington Street. It is zoned C-2 (General Commercial) and subject to Title 19 development standards. Properties adjacent to the east and west are currently undeveloped while the property to the south is developed with an existing single-family dwelling. The property to the north is developed with an existing church and general retail establishment. The applicant proposes to develop the subject site with a 3,567 square-foot commercial shell building development.

The proposed tenant space uses include Office, Restaurant and General Retail Store, Other than Listed, which are all listed as permitted uses within the C-2 (General Commercial) zoning district. Per Title 19, the Office, Other than Listed use is defined as, "A building or rooms used for conducting the affairs of a business, profession, service, industry or government other than those which are specifically listed in this Title. This use includes a radio broadcasting facility and a recording studio." The Restaurant use is defined as, "An establishment providing for the preparation and retail sale of food and beverages, including without limitation cafes, coffee shops, sandwich shops, ice cream parlors, fast food take-out (i.e. pizza) and similar uses."

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The General Retail Store, Other Than Listed use is defined as, “A facility for the retail sale of general merchandise to the general public for direct consumption and not wholesale. This use:

1. Includes such uses as an antique/collectible store, retail bakery, convenience store, grocery store, drug store, service station and specialty merchandise store.
2. Includes other general retail uses that may be specifically defined in LVMC Chapter 19.18 and whose definitions may include specific limitations and restrictions, which shall apply as described in that Chapter.
3. Does not include uses that are specifically listed in LVMC Chapter 19.12 .”

The submitted plans depict a two-story 3,567 square-foot building with tenant spaces for proposed office, general retail and restaurant uses. The building is accessed by a single vehicle access aisle from Miller Avenue. The applicant is requesting a Variance (22-0654-VAR1) to allow 17 parking spaces where 21 is the minimum required. Staff does not support the request as a deficiency in required parking would possibly encourage on-street parking within the surrounding residential area. All landscape requirements are being met and the proposed planting materials adhere to the recommendations of the Southern Nevada Regional Plant List.

The building elevations depict a maximum building height of 27 feet to the building parapet. Approximately half of the building is two stories while the other half is single-story. The proposed building façade materials are stucco in neutral tones, which is compatible with the existing development in the surrounding area. While there is an R-2 (Medium-Low Density Residential) zoned property, currently developed with a church, located adjacent to the north of the subject site, Title 19.08.040 Residential Adjacency requirements are not applicable as it only applies to properties zoned R-E, R-D, R-1, R-SL or R-CL.

The Department of Public Works – Traffic Engineering Division has commented, “This project is expected to add an additional 137 trips per day on Miller Avenue, Lexington Street, Carey Avenue and Martin L King Boulevard. Currently, Carey is at about 45 percent of capacity and Martin L King is at about 87 percent of capacity. With this project, Carey is expected to be at about 46 percent of capacity and Martin L King to be unchanged. Counts are not available for Miller or Lexington, but they are believed to be under capacity. Based on Peak Hour use, this development will add into the area roughly 17 additional peak hour trips, or about one every four minutes.”

The subject site is located within the 2050 Master Plan West Las Vegas Area with an NMUX (Neighborhood Mixed-Use Center) land use designation. It is comprised of the neighborhoods immediately surrounding the Historic Westside district of Downtown Las Vegas, a culturally significant and diverse area including the Berkley Square Neighborhood, Bonanza Village, Vegas Heights, and Eastland Village neighborhoods. For many decades, West Las Vegas and its residents, predominantly African American,

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were physically and economically segregated from the rest of the community. West Las Vegas is comparatively poorer, homogeneous, and faces greater socio-economic challenges than other districts.

The NMXU (Neighborhood Mixed-Use Center) land use designation calls for moderate intensity neighborhood-oriented mixed use and town centers. Encouraged uses include neighborhood serving retail, shopping, services, dining, employment, residential and office uses (especially on upper floors), and civic uses. While the proposed commercial development does align with these uses, the development as designed is overbuilt. This is evidenced by the requested Variance for parking. Therefore, staff recommends denial of all entitlements. If approved, they will be subject to conditions.

**FINDINGS (22-0654-VAR1)**

In accordance with the provisions of Title 19.16.140(B), the Planning Commission and City Council, in considering the merits of a Variance request, shall not grant a Variance in order to:

1. Permit a use in a zoning district in which the use is not allowed;
2. Vary any minimum spacing requirement between uses;
3. Relieve a hardship which is solely personal, self-created or financial in nature.”

Additionally, Title 19.16.140(L) states:

“Where by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of enactment of the regulation, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of the piece of property, the strict application of any zoning regulation would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardships upon, the owner of the property, a variance from that strict application may be granted so as to relieve the difficulties or hardship, if the relief may be granted without substantial detriment to the public good, without substantial impairment of affected natural resources and without substantially impairing the intent and purpose of any ordinance or resolution.”

No evidence of a unique or extraordinary circumstance has been presented, in that the applicant has created a self-imposed hardship by proposing to construct a development that fails to comply with minimum Title 19 parking requirements. Redesign of the development would allow conformance to the Title 19 requirements. In view of the absence of any hardships imposed by the site’s physical characteristics, it is concluded that the applicant’s hardship is preferential in nature, and it is thereby outside the realm of NRS Chapter 278 for granting of Variances.

**FINDINGS (22-0654-SDR1)**

In order to approve a Site Development Plan Review application, per Title 19.16.100(E) the Planning Commission and/or City Council must affirm the following:

- 1. The proposed development is compatible with adjacent development and development in the area;**

The proposed commercial building is not compatible with adjacent development in the area, as it requires a Variance for parking. A less intense development would be more compatible with the area.

- 2. The proposed development is consistent with the General Plan, this Title, and other duly-adopted city plans, policies and standards;**

The proposed development does not adhere to minimum Title 19 parking requirements.

- 3. Site access and circulation do not negatively impact adjacent roadways or neighborhood traffic;**

Site access is provided by Miller Avenue, a 60-foot Minor Collector, which is sufficient in size to serve the proposed commercial development.

- 4. Building and landscape materials are appropriate for the area and for the City;**

The proposed building materials are compatible with the existing development in the surrounding area. The landscape materials adhere to recommendations of the Southern Nevada Regional Plant List.

- 5. Building elevations, design characteristics and other architectural and aesthetic features are not unsightly, undesirable, or obnoxious in appearance; create an orderly and aesthetically pleasing environment; and are harmonious and compatible with development in the area;**

While the submitted building elevation design characteristics are not unsightly, undesirable or obnoxious in appearance, the proposed development is deficient in parking, which if fully occupied, could lead to parking encroaching into the surrounding neighborhood. Therefore, staff finds the proposed development is not harmonious nor compatible with development in the area.



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**6. Appropriate measures are taken to secure and protect the public health, safety and general welfare.**

If approved, the proposed development will be subject to building permits thereby ensuring that the public health, safety and general welfare are protected.

**BACKGROUND INFORMATION**

<b><i>Related Relevant City Actions by Planning, Fire, Bldg., etc.</i></b>	
09/04/19	The City Council approved General Plan Amendment (GPA-76856) request from MLA (Medium Low Attached Density Residential) to GC (General Commercial) on 0.33 acres at 1364, 1376 and 1388 Miller Avenue. The Planning Commission and Staff recommended approval.
	The City Council approved Variance (VAR-76681) to allow 17 parking spaces where 21 is required on 0.33 acres at 1364, 1376 and 1388 Miller Avenue. The Planning Commission recommended Approval. Staff recommended denial.
	The City Council approved Site Development Plan Review (SDR-76682) for a proposed two story, 3,569 square-foot commercial building on 0.33 acres at 1364, 1376 and 1388 Miller Avenue. The Planning Commission recommended Approval. Staff recommended denial.
06/02/21	The City Council approved General Plan Amendment (21-0029-GPA1) to adopt the City Of Las Vegas 2050 Master Plan and amend the City Of Las Vegas General Plan from various categories to TOD-1 (Transit Oriented Development-1), TOD-2 (Transit Oriented Development-2), TOC-1 (Transit Oriented Corridor-1), TOC-2 (Transit Oriented Corridor-2), or NMUX (Neighborhood Center Mixed Use) within the City Of Las Vegas. The Planning Commission and Staff recommended approval.
01/10/23	The Planning Commission voted (6-0) to HOLD IN ABEYANCE 22-0654 [VAR1 and SDR1] to the February 14, 2023 Planning Commission meeting.
02/14/23	<p>The Planning Commission voted (7-0) to recommend APPROVAL of the following Land Use Entitlement project requests on 0.33 acres on the north side of Miller Avenue, approximately 160 feet west of Lexington Street (APNs 139-21-510-075 through 077), C-2 (General Commercial) Zone, Ward 5 (Cear)</p> <p>22-0654-VAR1 - VARIANCE - TO ALLOW 17 PARKING SPACES WHERE 21 ARE REQUIRED</p> <p>22-0654-SDR1 - SITE DEVELOPMENT PLAN REVIEW - FOR A PROPOSED TWO-STORY, 2,520 SQUARE-FOOT COMMERCIAL SHELL BUILDING DEVELOPMENT</p>

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<b>Most Recent Change of Ownership</b>	
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06/21/17	A deed was recorded for a change in ownership.
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<b>Related Building Permits/Business Licenses</b>	
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03/02/65	A building permit (#29404) was issued for a remodel at 1376 Miller Ave.
03/20/68	A building permit (#40872) was issued to expand and connect existing laundromat structures at 1388 Miller Ave.
03/29/77	A building permit (#1657) was issued for fire damage repair at 1388 Miller Ave.
06/23/78	A building permit (#7405) was issued for demolition at 1364 Miller Ave.
03/11/80	A building permit (#0883) was issued for a room addition to a commercial structure at 1376 Miller Ave.

<b>Pre-Application Meeting</b>	
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11/07/22	Staff conducted a pre-application meeting with the applicant where the submittal requirements and deadlines were reviewed for a proposed commercial development.
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<b>Neighborhood Meeting</b>	
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A neighborhood meeting was not required, nor was one held.	
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<b>Field Check</b>	
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12/01/22	Staff conducted a routine field check and found an undeveloped site. No issues were noted.
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<b>Details of Application Request</b>	
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<b>Site Area</b>	
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Net Acres	0.33
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<b>Surrounding Property</b>	<b>Existing Land Use Per Title 19.12</b>	<b>Planned or Special Land Use Designation</b>	<b>Existing Zoning District</b>
Subject Property	Undeveloped	NMX-U (Neighborhood Mixed Use Center)	C-2 (General Commercial)
North	Undeveloped	NMX-U (Neighborhood Mixed Use Center)	C-1 (Limited Commercial)
	General Retail Store, Other Than Listed	SC (Service Commercial)	N-S (Neighborhood Service)
	Church/House of Worship	MLA (Medium Low Attached Residential Density)	R-2 (Medium Low Density Residential)
South	Undeveloped	SC (Service Commercial)	C-2 (General Commercial)
	Single Family Detached	MLA (Medium Low Attached Residential Density)	R-CL (Single Family Compact-Lot)
East	Undeveloped	NMX-U (Neighborhood Mixed Use Center)	C-V (Civic)
West	Undeveloped	NMX-U (Neighborhood Mixed Use Center)	C-1 (Limited Commercial)

<b>Master and Neighborhood Plan Areas</b>	<b>Compliance</b>
Las Vegas 2050 Master Plan Area: West Las Vegas	Y
West Las Vegas Plan	Y
<b>Special Area and Overlay Districts</b>	<b>Compliance</b>
A-O (Airport Overlay) District (105 Feet)	Y
<b>Other Plans or Special Requirements</b>	<b>Compliance</b>
Trails	N/A
Las Vegas Redevelopment Plan Area	N/A
Interlocal Agreement	N/A
Project of Significant Impact (Development Impact Notification Assessment)	N/A
Project of Regional Significance	N/A

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## DEVELOPMENT STANDARDS

*Pursuant to Title 19.08, the following standards apply:*

<b>Standard</b>	<b>Required/Allowed</b>	<b>Provided</b>	<b>Compliance</b>
Min. Setbacks			
• Front	10 Feet	12 Feet	Y
• Side	10 Feet	10 Feet	Y
• Rear	20 Feet	23 Feet	Y
Max. Lot Coverage	50%	25%	Y
Max. Building Height	50 Feet	27 Feet	Y
Trash Enclosure	Screened, Gated, with Roof or Trellis	Screened, Gated, with Roof or Trellis	By Condition

*Pursuant to Title 19.08, the following standards apply:*

<b>Landscaping and Open Space Standards</b>				
<b>Standards</b>	<b>Required</b>		<b>Provided</b>	<b>Compliance</b>
	<b>Ratio</b>	<b>Trees</b>		
Buffer Trees:				
• North	1 Tree / 20 Linear Feet	6 Trees	6 Trees	Y
• South	1 Tree / 20 Linear Feet	5 Trees	5 Trees	Y
• East	1 Tree / 20 Linear Feet	7 Trees	7 Trees	Y
• West	1 Tree / 20 Linear Feet	7 Trees	7 Trees	Y
<b>TOTAL PERIMETER TREES</b>		<b>25 Trees</b>	<b>25 Trees</b>	<b>Y</b>

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<b>Landscaping and Open Space Standards</b>				
<b>Standards</b>	<b>Required</b>		<b>Provided</b>	<b>Compliance</b>
	<b>Ratio</b>	<b>Trees</b>		
Parking Area Trees	1 Tree / 6 Uncovered Spaces, plus 1 tree at the end of each row of spaces	6 Trees	3 Trees	N*
<b>LANDSCAPE BUFFER WIDTHS</b>				
Min. Zone Width				
• North	8 Feet		8 Feet	Y
• South	15 Feet		12 Feet	Y**
• East	8 Feet		8 Feet	Y
• West	8 Feet		8 Feet	Y

\*An Exception is requested to allow a reduction in required interior parking area planting materials.

\*\*When a principle structure is built at a less restrictive building setback, the setbacks shall prevail.

<b>Street Name</b>	<b>Functional Classification of Street(s)</b>	<b>Governing Document</b>	<b>Actual Street Width (Feet)</b>	<b>Compliance with Street Section</b>
Miller Avenue	Collector	Planned Streets and Highways	80	Y

**Pursuant to Title 19.08 and 19.12, the following parking standards apply:**

Parking Requirement							
Use	Gross Floor Area or # of Units	Required			Provided		Compliance
		Parking Ratio	Parking		Parking		
			Regular	Handi-capped	Regular	Handi-capped	
Office, Other Than Listed	1,187 SF	1:300 SF	4				
General Retail Store, Other Than Listed	1,730 SF	1:175 SF	10				
Restaurant	650 SF	1:50 SF of seating & waiting; 1:200 SF other	7				
TOTAL SPACES REQUIRED			21		17	N*	

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Parking Requirement							
Use	Gross Floor Area or # of Units	Required			Provided		Compliance
		Parking Ratio	Parking		Parking		
			Regular	Handi-capped	Regular	Handi-capped	
Regular and Handicap Spaces Required			20	1	16	1	N*
Loading Spaces	3,567 SF		1		1		Y
Percent Deviation			19%				

\*A Variance is requested to allow a reduction in parking spaces.

<b>Exceptions</b>		
<b>Requirement</b>	<b>Request</b>	<b>Staff Recommendation</b>
Provide six interior parking area trees	To allow three interior parking area trees	Denial